

Award No. 3186

Docket No. 2881

2-RDG-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That in accordance with the applicable agreements, the Carrier be ordered to pay to the surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any, the vacation allowance due each of the following for the calendar year 1954:

Edward M. Sterner	5 days
Clayton W. Dietrich	5 days
Joseph F. Shappel	15 days
Melvin G. Gockley	5 days
Raymond W. Henry	15 days
John F. Spatz	15 days
William H. Bernhardt	15 days

EMPLOYEES' STATEMENT OF FACTS:

(a) Edward M. Sterner was in the continuous employment of the Reading Company as a car repairer helper, St. Clair Car Shop, St. Clair, Pennsylvania, since October 10, 1922.

Prior to retiring August 1, 1953, Claimant Sterner had qualified for a vacation in the year of 1954 by rendering compensated service on not less than one hundred thirty-three (133) days during the preceding calendar year 1953.

Claimant Sterner was paid by the carrier in an amount of money equivalent to ten (10) days vacation on the first pay period of January 1954. He remained in retirement until the date of his death, February 20, 1957.

authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

Carrier maintains that the claim of the carmen's brotherhood is clearly barred by the above quoted rules inasmuch as proper claim, involving application of Article I, Section 5 of the August 21, 1954 Agreement, was not presented to any officer of carrier authorized to receive same within 60 days after January 1, 1955. Therefore, carrier submits that the claim of the carmen's brotherhood should be denied because of its failure to progress same in accordance with agreed-upon rules.

With respect to the payment of 1954 vacation to widows or dependent children of employes who died in 1953, Article I, Section 5 of the August 21, 1954 agreement provides as follows:

"Section 5. Article 8 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

"Effective with the year 1954, it is understood that if an employe who performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both, dies before receiving such vacation, or vacations, or payment in lieu thereof, payment of the allowance for such vacation or vacations shall be made to his surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any."

carrier submits that the clear provision and intent of this rule was that it become effective with the year 1954. It did not, in carrier's opinion, apply to employes who died in 1953. If this had been the intent, it would have been an easy matter to spell this out in the agreement. Carrier maintains, therefore, that Article I, Section 5, does not support the claim as set forth in President Fox's letter to the Board dated November 13, 1957.

Under all the facts and evidence presented hereinbefore, carrier maintains that this claim was not presented to or handled with its director of personnel as required by the provisions of the Railway Labor Act and, therefore, the Board should dismiss the claim. Without prejudice to its plea as to jurisdiction, carrier submits that, first, the brotherhood did not handle its claim as required by Article V of the August 21, 1954 agreement and, second, that the claim is not supported by the provisions of Article I, Section 5 of August 21, 1954 agreement, therefore, carrier respectfully requests that the Board deny the claim in full.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On March 14, 1955, the carrier agreed to a request that similar cases be held in abeyance pending appeal of a claim to this Division. The evidence of subsequent correspondence and conferences does not support the carrier's

contention that this claim was not handled on the property in accordance with the requirements of the Railway Labor Act, as amended.

In accordance with our Award No. 2166 and subsequent consistent awards, these claims must be sustained except that for Clayton W. Dietrich. It appears that at the time of his death he was subject to the scope of another agreement over which the Fourth Division has jurisdiction. Accordingly, we have no authority to act upon such claim.

AWARD

Claim for Clayton W. Dietrich dismissed.

Claim for other claimants sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1959.