

Award No. 3880

Docket No. 3305

2-CRI&P-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O.
(Machinists)**

**CHICAGO, ROCK ISLAND
AND PACIFIC RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That in accordance with Articles 7(a) and 8 of the Vacation Agreement Machinist Francis R. Casillas, Sr. is entitled to be paid for his vacation at the rate of the assignment held when he retired.

EMPLOYES' STATEMENT OF FACTS: Francis R. Casillas, Sr., hereinafter referred to as the claimant, was employed by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, as a machinist at its shops in Silvis, Illinois. The claimant has been in continuous employment of this carrier for approximately thirty-three (33) years until he retired on January 1, 1958, in accordance with the provisions of the Railroad Retirement Act.

After qualifying for a vacation in 1957, which would be due in 1958, Mr. Casillas became ill and was unable to work after July 1957. Because of this illness and the fact that he was unable to return to service, Mr. Casillas on January 1, 1958 made application for his annuity under the Railroad Retirement Act. At that time arrangements were made to pay Mr. Casillas the vacation due him for 1958 and which he had earned in the year 1957.

At the time the claimant retired and received the pay in lieu of his 1958 vacation the hourly rate of pay of machinists was \$2.428 per hour. When Mr. Casillas received his check the latter part of January 1958 his check for fifteen (15) days' vacation pay amounted to \$276.96, which, when broken down, figured at the rate of \$2.308 per hour, which was the hourly rate of his assignment prior to November 1, 1957. Mr. Casillas has requested that he be paid for his 1958 vacation at the rate of \$2.428 per hour, which was the rate of pay in effect on his assignment when he retired and when he received his vacation pay.

Item (c) does not apply because he was a monthly-rated employee.

Item (d) does not apply because he was not a piece-work employee.

Only Item (e) can apply, because he, as indicated, was not covered by Items (a) to (d), inclusive, **and the last pay period preceding the vacation during which he performed service, was in July, 1957**, and he was properly paid on basis of the average daily straight time compensation earned in the last pay period during which he performed service in accordance with Article 7 (e).

This rule is so clear and unambiguous as to require no great amount of study to clearly determine the claimant was properly paid and that the claim should be denied.

To support our position in this case, we wish to refer your Honorable Board's attention to Award No. 2735 of the Second Division of the National Railroad Adjustment Board involving an identical claim between this carrier and the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers. That claim, like this, was progressed on the basis of an alleged violation of Articles 7 (e) and 8 of the applicable vacation agreement. This claim was denied by your Board.

It is the position of this carrier that since Casillas had no employment relationship and, therefore, held no regular assignment during 1958, he was not eligible to be aid at the rate in effect at that time.

Having resigned on December 31, 1957 with his annuity effective July 10, 1957, Casillas consequently had no employe status and hence no regular assignment subsequent to that date. The vacation payment to Mr. Casillas in January, 1958 was according to the rate in effect during his last pay period during which he performed service.

The rate in effect in January, 1958 cannot under Article 7 (e) be used in this case to reimburse employees who had no employment status nor performed any service subsequent to July 10, 1957.

We respectfully request your Board to deny this claim.

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.

Claimant Casillas entered the Carrier's service in 1925. For a number of years prior to the events leading up to this claim he held a regular machinist assignment at the Carrier's shops in Silvis, Illinois. Claimant's last day of work for the Carrier was July 9, 1957, by which time he had rendered sufficient compensated service during the calendar year 1957 to qualify for a paid vacation in the calendar year 1958. Claimant's amount of compen-

sated service during prior years was such as to entitle him to three weeks vacation. Beginning July 10, 1957 Claimant was absent from work due to illness. Finding himself unable to return to active duty, on December 31, 1957 claimant notified the Carrier he was resigning from the service. On January 3, 1958 he applied to the Railroad Retirement Board for an annuity. On April 17, 1958 that agency awarded claimant a full annuity retroactive to July 10, 1957. Following receipt of notice of Claimant's retirement, the Carrier granted him pay for three weeks in lieu of a 1958 paid vacation, pursuant to Article 8 of the Vacation Agreement. Carrier computed this vacation pay on the basis of \$2.308 per hour, which was the rate of Claimant's assigned position as of his last day of work in July 1957. Effective November 1, 1957, however, the rate of this position had been increased by 12 cents to \$2.428 per hour.

The Organization contends that the Claimant held a regular assigned position as a machinist until he filed for retirement annuity and that Article 7 (a) of the Vacation Agreement required the Carrier to calculate Claimant's vacation pay on the basis of the higher rate applicable to his position at the time the retirement application was filed. The Organization notes that on January 14, 1958 the Carrier posted a bulletin which advertised a vacancy in the position which Claimant had held and further notes that this bulletin listed the Claimant as the former incumbent of said position.

Article 7 (a) of the Vacation Agreement declares:

"An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The Carrier responds that the controlling provision is Article 7 (e) of the Vacation Agreement, which states:

"An employe not covered by paragraphs (a), (b), (c) or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

The Carrier urges that 7 (a) does not apply because Claimant Casillas did not have a regular assignment after July 10, 1957 or in 1958; that 7(b), (c) and (d) also do not apply to him (which is undisputed); and thus that only 7 (e) can be applicable to the instant case. The Carrier asserts Casillas should be treated as if he had taken retirement action in July 1957 and had then been granted vacation pay in lieu of a 1958 vacation .

It is undisputed that Claimant Casillas held a regular machinist assignment as of his last day of work on July 9, 1957. The evidence requires the conclusion that he continued to hold this assignment after that date, although he was unable to work due to illness. If at any time prior to the end of 1957 he had been able to resume active service, he would have been entitled to work this assignment by virtue of being the regular incumbent thereof. The record indicates that this position was not posted as a regular (as distinguished from temporary) vacancy until January 14, 1958. No contention is made that this position was abolished prior to the time that Claimant Casillas took steps to effectuate his retirement.

In the light of the foregoing, we conclude that the Claimant had a regular assignment as machinist as of (and subsequent to) November 1, 1957, when a 12 cents per hour wage increase became effective for this assignment,

and that in consequence he was entitled to be compensated for vacation pay on the basis of \$2.428 per hour, instead of \$2.308 per hour. The claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1961.