

Award No. 4045

Docket No. 3928

2-SLSF-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

ST. LOUIS - SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the provisions of the vacation agreement retired Machinist Eli M. Hasler has been improperly denied payment in lieu of three (3) weeks vacation due him in 1960.

2. That accordingly the Carrier be ordered to compensate the aforesaid retired employe an amount equal to fifteen (15) days pay in lieu of vacation.

EMPLOYEES' STATEMENT OF FACTS: Eli M. Hasler, hereinafter called the claimant, was employed by the St. Louis-San Francisco Railway Company, hereinafter called the carrier, for thirty-eight (38) continuous years and had more than fifteen (15) vacation-qualifying years to his credit.

The claimant worked until July 2, 1959, at which time he became ill. He remained off work because of his own sickness the remainder of 1959. Prior to becoming sick, he had rendered compensated service on 12 5days in 1959 toward qualifying for a vacation in 1960.

The claimant had not returned to work at the time the local supervision and the local committee jointly prepared the 1960 vacation schedule. They therefore assigned the claimant a vacation period beginning December 1, 1960 of three (3) consecutive weeks.

The claimant on February 23, 1960 applied for and received a disability annuity.

This dispute was unsuccessfully handled with all carrier officers authorized to handle grievances, including the highest designated officer, with the result that he too declined to adjust it.

The agreement effective January 1, 1945, as subsequently amended, and the vacation agreement of December 17, 1941, as subsequently amended, are controlling.

The carrier respectfully requests this board to so find.

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, aged 62 when last performing compensated work for carrier, was granted sick leave by carrier beginning July 3, 1959 and continuing till February 23, 1960. Before July 3 he had done compensated work for 125 days in 1959 and had had more than 15 years of service with carrier. On February 23, 1960, he applied for a disability annuity under Section 2(a)4 of the Railroad Retirement Act. Subsequently, he was granted same effective July 3, 1959.

The issue in this case is whether claimant properly qualified for 15 days of pay in lieu of a 1960 vacation. That is, did he fulfill the requirements of Article 1 of the parties' amended vacation agreement? More specifically, did he fulfill the requirement dealing with the minimum number of compensated work days for 1959?

If claimant had not retired as he did, there could be no question, and the issue would not be before the division. Paragraph (f) in conjunction with paragraph (c) of the vacation agreement would have operated to give him considerably more than the required minimum of 133 "compensated" work days. But the facts of claimant's retirement boil the issue here down to the question of whether claimant retained his status as an employe of carrier long enough in 1959 to meet the 133 day requirement.

On this question, the Division finds the analysis and findings of Award 2136, covering essentially similar circumstances, persuasive and controlling. Even though the instant claimant's retirement annuity was made effective before he had accumulated the required number of "compensated" work days in 1959, he at his age retained, under the Railroad Retirement Act, the right to return to carrier's service. This means that his employment status with carrier had not finally terminated in 1959. It follows that under the amended vacation agreement he qualified for pay in lieu of vacation in 1960.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1962.