

**Award No. 4168**

**Docket No. 4160**

**2-GN-CM-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Vacation Agreement, retired Carman Thomas Furlong has been improperly denied payment in lieu of fifteen (15) days' vacation earned in 1960.

2. That accordingly the Great Northern Railway Company be ordered to additionally compensate the aforesaid retired employe in the amount of fifteen days pay in lieu of his fifteen days of vacation earned in the year 1960.

**EMPLOYEES' STATEMENT OF FACTS:** Carman Thomas Furlong, hereinafter referred to as the claimant, was employed by the Great Northern Railway Company, hereinafter referred to as the carrier, at Havre, Montana, and had more than fifteen (15) vacation qualifying years of continuous service with the carrier.

He retired from the service of the carrier on June 16, 1960, after having performed not less than 100 days of compensated service in the year 1960.

Claimant requests that he be compensated in the amount of fifteen (15) days pay in lieu of vacation which he earned in the year 1960 and due him in 1961 as provided for in the controlling collective bargaining agreement.

The dispute has been handled with the carrier officials designated to handle disputes all of whom declined to adjust it.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

**POSITION OF EMPLOYEES:** The employes submit that the claimant who qualified for a vacation in more than 15 of the preceding years is, under the clear and unambiguous provision of Article 4, Section 1(c) of the August 19,

the calendar year 1961 and to employes covered by the agreement. The claimant was retired before 1961 and was not covered by the agreement.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,  
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The claim is barred from consideration on its merits because it was not filed within sixty days of the occurrence upon which it is based as required by Article V, Section 1(a) of the August 21, 1954 agreement.

2. The Vacation Agreement of August 19, 1960 is without retroactive application to an employe who retired prior to its consummation without qualifying for a 1961 vacation allowance under the provisions of the Vacation Agreement in effect on the date of his retirement.

For the foregoing reasons, the carrier respectfully requests that the claim of the Employes be denied.

**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 were given due notice of hearing thereon.

The Claimant, Thomas Furlong, prior to his retirement on June 16, 1960 worked for the Carrier as a carman at Havre, Montana. As the Claimant had more than fifteen years of continuous service and having qualified for it during the year 1959, the Claimant received a fifteen-day vacation in 1960—prior to his retirement.

On August 19, 1960, a Vacation Agreement was consummated reducing from 133 to 100 the number of qualifying days an employe must—with fifteen-year's service—work in a calendar year, to qualify for a vacation the following year.

On December 7, 1960, the Organization's Local Chairman initiated this claim—contending that the Claimant had worked more than 100 days in 1960 and, therefore, he was entitled to receive fifteen-days' pay in lieu of fifteen-days' vacation. The Organization bases its claim on the language of Article IV, Section 1(c) of the August 19, 1960 Vacation Agreement.

The Carrier contends that the claim was barred because it was not filed within sixty days of August 19, 1960, the consummation date of the Vacation Agreement; and that the August 19, 1960 Vacation Agreement has no retroactive application for an employe who retired prior to the Agreement's consummation. In support of its position the Carrier cites Article V, Section 1(a) of the August 21, 1954 Agreement, the pertinent portion of which reads as follows:

"All claims or grievances must be presented . . . within 60 days from the date of the occurrence on which the claim or grievance is based."

The record indicates that the Organization did not deny or rebut—either on the property or in its Submission to this Board—the Carrier's contention that "the claim is invalid under the time provisions for filing claims under Article V, Section 1(a) of the August 21, 1954 National Agreement."

We believe—in keeping with the language set forth in Article V, Section 1(a)—that the Organization's claim is invalid, because it was not filed within 60 days from the date on which the August 19, 1960 Vacation Agreement was consummated.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.

#### DISSENT OF LABOR MEMBERS TO AWARD 4168

The majority states in their findings the following:

"The record indicates that the Organization did not deny or rebut—either on the property or in its submission to this Board—the Carrier's contention that 'the claim is invalid under the time provisions for filing claims under Article V, Section 1(a) of the August 21, 1954 National Agreement.'"

This is not correct as the record shows that this claim was denied by the Car Foreman, the Shop Superintendent and the Chief Mechanical Officer, stating that the Claimant did not have the necessary qualifying days to be allowed the fifteen days vacation in the year 1961. The claim was then appealed to the Vice President who also denied the claim for the same stated reason, and for the first time the Carrier then objected to the claim on two procedural grounds.

The General Chairman in a letter dated January 9, 1961 rebutted these contentions to the Carrier on the property. This letter is shown as the Carrier's Exhibit C-10 in their ex parte submission. The Employees also rebutted this contention in their rebuttal to the Carrier's submission.

The majority also stated in their findings the following:

"We believe—in keeping with the language set forth in Article V, Section 1(a)—that the Organization's claim is invalid, because it was not filed within 60 days from the date on which the August 19, 1960 Vacation Agreement was consummated."

This means that the majority failed to give proper consideration to the December 17, 1941 Vacation Agreement and the August 19, 1960 Agreement. As the claim in this dispute is for pay in lieu of the vacation earned by the Claimant in the year 1960 in accord with the August 19, 1960 Agreement, and the June 10, 1962 interpretation of the December 17, 1941 Vacation Agreement which reads as follows:

"As the vacation year runs from January 1 to December 31, payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year; if not so paid, shall be paid on the payroll for the first payroll period in the January following, or if paid by special roll, such payment shall be made not later than during the month of January following the vacation year."

This means that the 60 day time limit for presenting this grievance in accord with the August 21, 1954 Agreement would not start until January 1962 as it is the month of January following the vacation year for which the payment could be made in lieu of vacation.

The August 19, 1960 Agreement reduced the number of days necessary to become qualified for a vacation in the year 1961 and since the Claimant qualified the present claim should have been sustained the same as Second Division Award 2151.

For these reasons therefore the majority erred in their Award when they dismissed the dispute.

**E. J. McDermott**

**T. E. Losey**

**C. E. Bagwell**

**R. E. Stenzinger**

**James B. Zink**