

**Award No. 4284**

**Docket No. 4158**

**2-GM&O-CM-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.**

---

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**GULF, MOBILE & OHIO RAILROAD COMPANY  
(NORTHERN REGION)**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the applicable agreement Carman Carl Bains is entitled to fifteen days of vacation pay earned in the calendar year 1960.

2. That accordingly, the carrier be ordered to compensate Mr. Bains for fifteen days pay at the straight time rate.

**EMPLOYES' STATEMENT OF FACTS:** Carman Carl Bains, hereinafter referred to as the claimant, retired from service with the Gulf, Mobile & Ohio Railroad, hereinafter referred to as the carrier, July 20, 1960. He had been in continuous service at Bloomington, Illinois since July 15, 1912.

The claimant worked ninety-nine (99) days in the calendar year 1960 prior to retiring. He missed work approximately 41 days in the calendar year 1960 due to his own sickness.

This dispute was handled on the property through all stages and on April 6, 1961 was appealed to the highest designated officer authorized to handle grievances.

Contract counselor replied under date of June 1, 1961 and declined to make correction. The agreement effective July 1, 1946 as subsequently amended, is controlling.

**POSITION OF EMPLOYES:** The Employees' submit that the claimant who has been in the carrier's service since July 15, 1912 and has 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, 1960 agreement, entitled to vacation or pay in lieu thereof. Article 4, Section 1 (c) reads as follows:

severed his employment relationship some forty (40) days prior to September 1, 1960.

### CONCLUSION

At the time claimant resigned and terminated his employment relationship on July 20, 1960, he was given the full benefits of vacation payments under the August 21, 1954 Agreement. At the time of his retirement claimant had not rendered a sufficient number of qualifying days of service in 1960 to qualify for a 1961 vacation payment. Claimant's resignation and retirement severed his employment relationship as of that date. The liberalized vacation provisions of the August 19, 1960 Agreement were not intended to be retroactive and thus grant additional vacation payments to former employees.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 facts in this Docket are not in dispute.

Claimant earned in 1959 15 days paid vacation which he received in 1960.

Claimant in 1960, prior to his retirement, had credit for 129 working days toward qualifying for 15 days of a 1961 vacation, or payment in lieu thereof.

On July 20, 1960 claimant resigned and was awarded an annuity under the Railroad Retirement Act effective June 2, 1960.

Up to the date of August 19, 1960, the vacation agreement in effect required that an employee with claimant's status needed 133 compensated days to qualify for a vacation in 1961.

Under Article IV, Section 1 (c) of the vacation agreement of August 19, 1960, it is claimant's position that he had more than 100 days of compensated service (as provided in the new agreement) and therefore he is entitled to payment in lieu of the 15 days' vacation which he claims he has earned.

Carrier points first to the effective date of claimant's severance of employment and the date of the new agreement (August 19, 1960) and contends that Article IV Section 1(c) cannot be applicable to claimant, because he was not an employee on August 19.

Carrier further contends that by Article IV, Section 2 of the August 19, 1960 agreement the parties expressed an effective date which defeats claimant's contention.

This Section reads in part as follows:

"Article 8 of the Vacation Agreement of December 17, 1941, as amended by the agreement of August 21, 1954, is hereby amended, effective September 1, 1960, to read as follows:" (Emphasis ours)

Actually, the whole of Article IV is made effective as of January 1, 1961, except for the effective date of September 1, 1960 contained in Section 2 (supra).

We are unable to find any retroactive effect of the new agreement of August 19, 1960 which would bring this claimant within the ambit of the 100 qualifying days as set out in the agreement.

We must decline the claim.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.