

Award No. 4297

Docket No. 4130

2-MP-MA-'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.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement retired Machinists J. L. Barbour was improperly denied payment in lieu of vacation for the year 1960, which was earned in the year 1959.

2. That accordingly the carrier compensate Mr. Barbour fifteen (15) days' vacation pay for the year 1960.

EMPLOYEES' STATEMENT OF FACTS: Retired Machinist J. L. Barbour, hereinafter referred to as the claimant, was employed by the carrier on December 6, 1922.

During the year 1959 the claimant performed compensated service on 133 days or more, thereby qualifying him for a vacation with pay in 1960 or payment in lieu thereof.

The claimant was injured September 20, 1959 when lifting a 55 gallon barrel of lub oil on a barrel rack at Poplar Bluff, Missouri and sustained a rupture. The claimant was operated on on October 3, 1959 at the Doctors' Hospital at Poplar Bluff. The doctor in attendance advised the claimant to retire, which he did effective October 1, 1959, on a reduced pension, at the age of 61.

Mr. Dick Welch, Claim Agent for the carrier, called on the claimant many times to settle his injury case and after the claimant had retired and following several offers by Mr. Welch, a settlement was reached and draft No. 4647 was issued by the carrier in the amount of \$2,485.97 on December 1, 1959.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

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

"without allowance of any compensation for time lost." After being reinstated to service, the employe filed a new claim for payment in lieu of vacation in the year in which he was out of service. Two theories were advanced in discussion of the claim, one that claimant did not have an employment relationship during the period the claimant was out of service and the other that the discharge by the carrier was not final until your Board had acted upon the claim. We need not consider the merits of the two points of view here. We need consider only your Board's decision. Your Board held, if the claimant's employment relationship had been terminated by the discharge, he was not entitled to the payment under Article 8 of the Vacation Agreement because his employment relationship had been terminated prior to the taking of the vacation. On the other hand, your Board held if claimant's employment relationship had not been terminated, then any claim for payment in lieu of vacation during the period the claimant was out of service would be subject to the time limit rule like any other claim or grievance. Your Board found that the claim for payment in lieu of vacation had not been presented within the time limits provided in the applicable agreement on that property and denied the claim.

In the same way here, we have a claim for payment in lieu of vacation which has not been timely presented and the claim must be denied as in Award 2926. The time limit rule must be strictly construed. The claim is barred by Section 1 (a) of Article V of the agreement of August 1, 1954, and must 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, John Lee Barbour, became a Carrier employe on December 6, 1922 and until his retirement worked as a machinist at the Carrier's facility at Poplar Bluff, Missouri.

On September 20, 1959, the Claimant was injured while lifting a 55 gallon barrel of oil into a barrel rack. On October 3, 1959, the Claimant underwent surgery.

On the advice of his physician, the Claimant—at age 61—applied for retirement. On November 25, 1959, the Railroad Retirement Board acted on the Claimant's request and granted him an annuity effective October 1, 1959.

On December 1, 1959, a Carrier Claim Agent presented Mr. Barbour with a check for \$2,485.97 as compensation for his personal injury and for any lost work time.

In August 1960, the Claimant made an oral inquiry at the Poplar Bluff office of Master Mechanic, H. E. Jamieson for 15 days' pay in lieu of a vacation in 1960. Mr. Barbour based his claim on the fact that he had rendered "compensated service on at least 133 days in 1959"—thus earning for the

year of 1960 an annual vacation of 15 days or payment in lieu thereof—in keeping with Paragraph 8 of the Vacation Agreement which reads as follows:

“No vacation with pay or payment in lieu thereof will be due an employe whose employment relation with a Carrier has terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due.”

On March 20, 1961, the Organization's Local Chairman filed a claim which was denied by Master Mechanic Wiggans on March 23, 1961, on grounds other than the grounds that the claim was not timely presented.

On April 17, 1961, Chief Mechanical Officer L. R. Christy denied the appeal made to him on the ground that “this claim was not presented within the time limit presented by the agreement”.

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 in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based.”

The controlling Agreement provides for vacation or payment in lieu thereof for retiring employes who have worked the prescribed number of days in a calendar year and meet the necessary qualifications.

Obviously, the Claimant had worked the requisite number of days during 1959 to earn vacation entitlement. He had also voluntarily retired in accordance with the controlling provisions. Therefore, up to this point the Claimant would seem to qualify for 15 days' pay in lieu of earned vacation entitlement.

However, the August 21, 1954 Agreement must also be considered. This document, which represents the mutual agreement and determination of the Carriers and the Organizations, is equally binding on all the contracting parties and may be changed in part or in toto only by them.

In this particular instance, to be eligible for vacation entitlement the Claimant must also satisfy the provisions of Article V, Section 1(a) of the August 21, 1954 Agreement, *supra*, as well as the provisions of Paragraph 8 of the Vacation Agreement contained in the controlling Labor Agreement dated September 1, 1949.

While the Claimant met the demands of Paragraph 8, he did not, however, fulfill the requirements of Article V, Section 1(a).

The Carrier raised the time limit question on the property, but the Organization neither on the property nor in its Submission mentioned, denied, contradicted, or rebutted the Carrier's contention that the claim was not timely presented.

It cannot be logically or successfully argued that the Organization was within its rights in waiting to see if the Carrier paid the Claimant his alleged vacation entitlement during the year of 1960, because both the Claimant and

the Organization were aware of the Carrier's prior denial of this claim. Consequently, to allow the entire year of 1960—plus an additional 79 days—to run its course before filing a written claim was an empty and fatuous gesture. Unquestionably, both Claimant and the Organization are guilty of laches.

Time limits, legally entered into, are binding in all phases of personal and business life. Such limitations have a mutually protective purpose and their stipulations must be honored or their benefits forfeited.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September, 1963.