

Award No. 4647

Docket No. 4636

2-EL-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

ERIE-LACKAWANNA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current vacation agreement Machinist-Helper Dominick Fritzie was unjustly dealt with, when the Erie-Lackawanna Railroad Company refused to pay him in lieu of vacation earned in 1962.

2. That accordingly, the Carrier be ordered to pay this vacation pay.

EMPLOYES' STATEMENT OF FACTS: Dominick Fritzie, hereinafter called the claimant, is employed by the Erie-Lackawanna Railroad Company, hereinafter called the carrier, at Scranton, Pennsylvania.

The claimant, in 1962, had more than fifteen years of continuous service with the carrier during which he worked sufficient days in each year to qualify for vacation.

In 1962, the claimant worked seventy-one days before being removed from service by the carrier on May 14, 1962, because of his own illness. The claimant applied for and received sick benefits under the provisions of the Railroad Unemployment and Insurance Act.

The claimant applied for but was denied his vacation or pay in lieu thereof earned by him in the year 1962.

Claim was presented and declined by Master Mechanic D. M. Huggins.

This dispute was handled with all carrier officers authorized to handle disputes with the result that all of them declined to adjust it.

The agreement dated July 1, 1951, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the claimant was entitled to three weeks' vacation, now pay in lieu thereof, for the

Leighty of the Order of Railroad Telegraphers it is manifest that the provisions of Section 1 (f) of the August 19, 1960 agreement do not apply to any employee, such as claimant, who has no active employment status with a carrier. Petitioner most certainly could not, or would not, argue that an employee who retired under the Railroad Retirement Act on age or service could legitimately claim the benefits of Section 1 (f) and claimant's status is no different. He is in the identical position of any other retired employee or an employee who resigned, was furloughed, laid off or dismissed. Effective with the day after he was physically disqualified for all service, the applicable rules agreement between the parties insofar as active employees are concerned ceased to apply. This being so he cannot legitimately claim the benefits of Section 1 (f), which are most certainly an integral part of the rules agreement, any more than he could thereafter claim under other conditions of the agreement applying only to employees with an active employment relationship.

Based upon the foregoing facts, reasons and authorities cited, carrier submits there is no merit or reason to petitioner's argument that claimant is entitled to that which is here claimed. This claim should accordingly be either dismissed or 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 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 waived right of appearance at hearing thereon.

The Carrier here contends that the claim should be dismissed because it was not handled in accordance with Rule 30 and Article V of the August 21, 1954 National Agreement. These questions were not raised in the handling of this claim on the property, so they are not properly before us.

The Carrier also contends that Article IV, Section 1 (f) of the August 19, 1960 National Agreement, applies only to employees who have an active employee relationship with the Carrier. We are unable to accept that interpretation. Surely it would be applicable to an employee on extended leave of absence for illness or injury, yet such employee is not in an active employee status.

Under the circumstances here shown this claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.