



**Award No. 5307**

**Docket No. 5091**

**2-GN-FO-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Vacation Agreement, retired Laborer Anthony Heinen, St. Cloud (Waite Park) Car Shops has improperly been denied payment of 9¢ per hour on three weeks of vacation pay for 1965 due him at time of his retirement.
2. That accordingly the Carrier be ordered to additionally compensate the aforesaid retired employe in the amount of 9¢ per hour for 120 hours (3 weeks) vacation pay, a total of \$10.80.

**EMPLOYEES' STATEMENT OF FACTS:** Retired Shop Laborer Anthony Heinen, hereinafter referred to as the Claimant, entered the service of the Great Northern Railway Company, hereinafter referred to as the Carrier, at its St. Cloud (Waite Park) Minnesota Car Shops as a laborer September 23, 1943 and was continuously employed at the St. Cloud Shops until he retired effective December 1, 1964 under provisions of the Railroad Retirement Act. At the time of his retirement, Claimant had worked in excess of twenty qualifying years for vacation purposes and was paid in lieu of a 1965 vacation, three weeks (120 hours) of vacation pay at the hourly rate of \$2.2728 even tho, ten days prior to his retirement the National Agreement of November 21, had been signed, which granted to all employes an hourly increase of 9¢ per hour retroactive to January 1, 1964, and another 9¢ per hour effective January 1, 1965. On January 15, 1965 Carrier made payments to all employes of retroactive back pay, and Claimant was paid an additional 9¢ per hour for his three week vacation period but was not paid the second 9¢ per hour effective January 1, 1965.

The dispute was handled with Carrier officials designated to handle such affairs, all of whom declined to adjust the matter.

The agreement of September 1, 1949, as subsequently amended, and the Vacation Agreement of December 17, 1941, as subsequently amended, are controlling.

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

1. The 1965 vacation allowance paid to the claimant when he retired from service on November 30, 1964, was calculated on the basis of the average daily straight-time compensation earned by him in the last pay period preceding his retirement during which he performed service.

2. Article 7(e) of the Vacation Agreement, which specifically deals with the calculation of vacation allowances for individuals not in active service, including those retiring from service, clearly and unequivocally required the claimant's 1965 vacation allowance to be determined on this basis.

3. The Organization has pointed to no language in any schedule rule or agreement to support its contention that the vacation allowance granted the claimant at the time of his retirement on November 30, 1964, should be augmented to reflect the 9 cents per hour wage increase which became effective in 1965, the year following his retirement.

For the foregoing reasons, the Carrier respectfully requests the claim of the employees to be denied.

All of the evidence and data contained herein has been presented to the duly authorized representatives of the employee. (Exhibits Not Reproduced)

**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 hearings thereon.

Claimant, a laborer with more than twenty years service, retired on November 30, 1964. At that time he received his compensation, including an allowance for fifteen days vacation which, under Article 7(e) of the Vacation Agreement, was based on his average daily straight-time rate of pay “earned in the last pay period preceding the vacation during which he performed service.”

Nine days prior to his retirement, a new National Agreement was negotiated which increased the hourly rate of pay for laborers and other employees by nine cents effective January 1, 1965. Petitioner maintains that that increase should be reflected in Claimant's vacation allowance and that an additional amount is therefore due him.

Carrier contends that the claim is defective since it was not filed within sixty days from the date it arose as required by Article V of the August 21, 1954, National Agreement. It argues that the sixty day period runs from November 30, 1964, the date on which Claimant retired and knew how much he had received for his vacation allowance. Petitioner points out that the

employees did not receive the nine cent wage increase provided for by the November 21, 1964, Agreement until January 15, 1965, and urges that the sixty day period does not begin to run until the latter date.

In our opinion, the contentions as to both dates—November 30, 1964, the date when Claimant retired, and January 15, 1965, the date when employees were paid the increase, are artificial and unsound. The increase became effective on January 1, 1965, and that is the date when it became due and payable and when Claimant first may have been entitled to payment. It accordingly is our conclusion that January 1, 1965, is the logical and proper date for the beginning of the sixty day period. (Third Division Awards 14453 and 15413 are in accord with our reasoning and view but sustained claims that, unlike the claim now before us, were filed within sixty days from the date wage increases became effective).

In the present case, the claim was not filed until March 8, 1965, sixty-nine days after the effective date of the increase. It accordingly is apparent that Petitioner failed to comply with the sixty day requirement. Under the circumstances, we have no alternative but to dismiss the claim.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.