

Award No. 7651

Docket No. MW-7332

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Vacation Agreement of December 17, 1941, and the amendments and supplements thereto when it failed and refused to allow pay in lieu of the 1954 vacation earned by B. & B. Carpenter Clyde Cathey who retired under the provisions of the Railroad Retirement Act on December 28, 1953;

(2) The Carrier now be required to allow pay in lieu of the 1954 vacation earned by and due to retired Carpenter Clyde Cathey.

EMPLOYEES' STATEMENT OF FACTS: During the calendar year of 1953, Mr. Clyde Cathey performed in excess of one hundred and thirty-three (133) days of compensated service while employed by the Carrier as a Bridge and Building Carpenter, and had similarly performed a sufficient number of days of compensated service in each of five years prior to 1954, so as to entitle him to a ten working days' paid vacation in the calendar year of 1954, or pay in lieu thereof, under the provisions of the Vacation Agreement then in effect.

Mr. Cathey also performed a sufficient number of days of compensated service in each of fifteen years prior to 1954, (not necessarily consecutive) so as to entitle him to a fifteen work days' paid vacation in 1954, or pay in lieu thereof, under the provisions of the Vacation Agreement which became effective as of January 1, 1954.

While in active service during 1953, Mr. Cathey requested Roadmaster H. C. Thomas to schedule his (Cathey) vacation for 1954 to begin as of January 4, 1954, and his 1954 vacation assignment was scheduled accordingly by the express authority and approval of Roadmaster H. C. Thomas on December 30, 1953.

Late in December of 1953, Mr. Cathey went to the office of Roadmaster Thomas for the purpose of advising of and discussing his intention to shortly retire from active service with the Carrier under the provisions of the Railroad Retirement Act.

Mr. Cathey went to the office of the Railroad Retirement Board on December 28, 1953, for advice and counsel in connection with his forthcoming

reasons advanced for denial of Part (1) are with equal force applicable to Part (2) the same as though repeated in full at this point in Carrier's submission.

Carrier submits that there is no basis from any standpoint for the claim presented by Employees and respectfully urges that it should be denied in its entirety.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by Employees in relation to such issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

OPINION OF BOARD: The facts of this case are not disputed. Claimant Cathey, a member of this Carrier's Maintenance of Way Department, with more than fifteen years seniority, had the necessary one hundred and thirty-three days of compensated service in each of the five years prior to 1954, to qualify for ten days of vacation pay to be taken during the calendar year 1954. His last service was performed on December 23, 1953. On December 28, 1953 Claimant filed an application for annuity under the provisions of the Railway Retirement Act, in which he voluntarily gave up any rights which he then held to return to the service of this Carrier.

About the same time, Claimant also requested that his 1954 vacation be scheduled for early January. Accordingly, Carrier's Roadmaster approved the vacation request for January 4 to 15, 1954, inclusive. However, on January 15, 1954 the Road master rescinded this action and refused to pay Claimant's 1954 vacation allowance.

On January 20, 1954, the instant claim was filed for pay in lieu of the ten days vacation. Subsequently the parties adopted the 1954 amendment to the Vacation Agreement of December 17, 1941, which amendment increased from ten days to fifteen days the vacation allowance of those with fifteen or more years of service with the Company. This amendment was adopted August 21, 1954, and was made retroactive to January 1, 1954. As a result, the instant claim was amended in September 1954, to request pay for fifteen vacation days for Claimant for 1954.

This claim was denied. Negotiations on the property failed to settle the issue and the claim has been progressed to the Board.

The primary disagreement between the parties is over the intent and purpose of Article 8 of the Vacation Agreement of December 17, 1941, which follows:

"8. 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.**" (Emphasis added)

There is no ambiguity in this language. It clearly protects the vacation rights of retiring employes. Since this Vacation Agreement has been in effect, it is a well-recognized fact that one qualifies during one calendar year for the vacation which is allowed him during the next calendar year. Claimant Cathey qualified in 1952 for the vacation which he took during the year 1953. And in performing 133 days of compensated service for the Carrier in 1953, he qualified for a vacation in 1954. The amount of vacation "due"

him for 1954 was the same as that due any employe with fifteen or more years of service who qualified by performing the necessary 133 days of compensated service in 1953. Admittedly Claimant was no longer an active employe of this Carrier after January 1, 1954. But the Vacation Agreement specifically provides for the safeguarding of the vacation rights of those "employees retiring under the provisions of the Railroad Retirement Act . . ." These employees are to "receive payment for vacation due."

Just as the earlier Vacation Agreement provided ten days of vacation, or pay in lieu thereof, for this Claimant, the August 21, 1954 Agreement, when made retroactive to January 1, 1954, increased this employe's vacation allowance to fifteen days. We have previously decided this issue in three different cases. See Awards 7336, 7368 and 7483. We think it unnecessary to belabor the point. This claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.