

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILWAY TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated terms of the agreement between the parties hereto when it failed and refused to pay Mrs. E. R. Lacy, widow of E. R. Lacy, deceased, vacation allowance due and payable in the calendar year 1954.
2. Carrier be required to pay Mrs. E. R. Lacy, widow of E. R. Lacy, deceased, a sum equal to fifteen days' pay, based upon rate of pay of the position held by Mr. Lacy at the time of his death.

EMPLOYES' STATEMENT OF FACTS: There are in full force and effect various collective bargaining agreements entered into by and between Southern Railway Company, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. All agreements are on file with this Board and are, by reference, included in this submission as though set out herein word for word.

This dispute arose when Carrier failed to pay to Mrs. E. R. Lacy, widow of E. R. Lacy, deceased, the vacation allowance earned in 1953 and due in 1954. The claim was presented and handled on the property in the usual manner and in accordance with the Railway Labor Act, as amended, to the highest official designated by the Carrier to handle such disputes. The claim was not adjusted, in accordance with the Agreement, and constitutes an unadjusted dispute between Employees and Carrier.

This Board has jurisdiction of the parties and the subject matter under the Railway Labor Act, as amended.

E. R. Lacy entered service of Carrier on the 1st day of July, 1913, and retained continuous employment status during the time herein involved. He was, at the time of his death, September 4, 1953, employed as first shift telegrapher, Appalachia, Virginia. The hourly rate of pay at that time was \$1.90 per hour.

because the service performed "in the year of his death" (1953) was prior to the effective date of the amendment.

It has been shown that:

Mr. Lacy did not have an employment relation with the Carrier on January 1, 1954, the effective date of amended Article 8 of the Vacation Agreement of December 17, 1941.

When Mr. Lacy died in September 1953, thus terminating his employment relation, the original provisions of Article 8 of the Vacation Agreement of December 17, 1941 were in full force and effect. Under its provisions, no vacation allowance was due or payable.

Carrier did not violate the terms of the agreement as alleged by the organization in its Statement of Claim.

This claim should be denied for the reasons stated, and Carrier respectfully requests that the Board so hold.

All pertinent facts and data used by the Carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier states its position as follows:

"There is no dispute between the parties as to the essential facts and circumstances involved in this case. The sole issue in dispute is whether or not Article I, Section 5 of the August 21, 1954 agreement is applicable in the case of an employe who died in 1953. If it is applicable, the claim must be sustained. If it is not, the claim must be denied. * * *"

Carrier then argues:

"It is evident in this case that the organization has misinterpreted the provisions of Article I, Section 5, of the August 21, 1954 agreement, particularly the language 'who performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both.' This language applies only to employes who die on or after January 1, 1954. There is no question about the fact that Mr. Lacy rendered 133 or more days of compensated service in the year of his death (1953), but this does not make him subject to the amended provisions of Article 8 which did not become effective until January 1, 1954, three months after his death. Almost eight months of 1954 had elapsed when the parties amended the 1941 Vacation Agreement. * * *"

The amended Section of the Agreement reads as follows:

"Section 5. Article 8 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

"Effective with the year 1954, it is understood that if an employe who performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both, dies before receiving such vacation, or vacations, or payment in lieu thereof,

payment of the allowance for such vacation or vacations shall be made to his surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any."

It is argued on behalf of Carrier that:

"* * * an employer-employee status was essential before one could claim benefits under this Agreement. The termination of this relation prior to the taking of the vacation freed the Carrier of any obligation assumed by it under the Vacation Agreement regardless of the cause of termination—death, resignation or dismissal. This was the situation which existed at the time decedent in this case died on September 4, 1953."

And further:

"The Carrier agrees that the right of a widow of a deceased employee to recover vacation pay earned and not received by him is contingent upon his dying in the year 1954, * * *."

The latter contention is rejected, as is Carrier's contention that the amendment to Section 5 became "effective as of January 1, 1954."

The contracting parties stated very clearly that the amendment in question was to be

"effective with the year 1954."

It further provided that if an employee

"performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both,"

dies before receiving "such vacation * * * or payment in lieu thereof" payment "shall be made" to his surviving widow, etc.

Being effective for the vacation year of 1954, the language of this amendment clearly entitles claimant widow to the 1954 vacation equity her husband admittedly earned by his service prior to his death on September 4, 1953.

While we have been advised by the Board Members arguing this case that the issue here involved has not heretofore been ruled on by this Division, it was ruled on in two identical claims by Awards 2166 (Carter) and 2245 (Wenke) of the Second Division. Both were sustaining Awards.

A sustaining Award will be made here.

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 13th day of June, 1958.