Award No. 14292
Docket No. CL-12793

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5025) that:

(a) Carrier violated the current Clerks' Agreement when it failed and refused to pay S. R. Hallman, an employe who retired under the provisions of the Railroad Retirement Act, the vacation allowance for 1961 which he had earned for service performed in 1960.

(b) Carrier shall now pay to S. R. Hallman the vacation allowance he is due, namely, fifteen (15) days' pay.

EMPLOYES' STATEMENT OF FACTS: 1. The Claimant, S. R. Hallman, retired from Carrier's service under provisions of the Railroad Retirement Act on June 15, 1960 after having rendered compensated service sufficient to qualify for a vacation in fifteen previous years. Claimant rendered compensated service on 120 days in 1960.

2. Claimant was not paid for vacation due in 1961. The claim is that he should be so paid because, in 1960, he rendered compensated service in excess of the 100 days set forth in Article 1 of the National Vacation Agreement as amended by Article IV of the Agreement of August 19, 1960. A copy of the General Chairman's appeal to Carrier's Assistant Vice-President is attached hereto and identified as Employes' Exhibit "A". A copy of the Assistant Vice-President's letter declining the claim is attached hereto and identified as Employes' Exhibit "B".

CARRIER'S STATEMENT OF FACTS: The claimant, S. R. Hallman, entered the service of the GM&O in October, 1942, and was employed as a Caller-Clerk at Venice, Illinois, at the time of his retirement under the provisions of the Railroad Retirement Act on June 15, 1960.

At the time of Mr. Hallman's retirement, he had worked a sufficient number of days in 1959 to qualify for a vacation in 1960. Not having taken his 1960 vacation prior to retirement, he was paid in lieu thereof a vacation allowance of fifteen (15) days.

Prior to his retirement on June 15, 1960, the claimant had rendered compensated service on only 120 days during the calendar year 1960 and, therefore, had not worked a sufficient number of days in 1960 to qualify for a 1961 vacation or payment in lieu thereof. At the time of claimant's retirement, his vacation payment for the calendar year 1960 was made under the provisions of Article I, Section 1 (c), of the August 21, 1954 Agreement as applicable to vacations, providing:

> "(c) Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than 133 days during the preceding calendar year and who has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive."

On March 14, 1961, the claimant requested an additional payment in lieu of vacation for the year 1961. The claim is based on the provisions of Article IV, Section 1 (c) of the Vacation Agreement of August 19, 1960, which reads as follows:

> (c) Effective with the calendar year 1961, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has fifteen (15) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years, not necessarily consecutive."

Claimant had terminated his employment relationship with the Carrier on June 15, 1960, and had been fully compensated for all vacation allowance due him at the time of his retirement, therefore, the claim for an additional vacation allowance based on the liberalized vacation qualifying conditions of the August 19, 1960 Agreement was denied.

OPINION OF BOARD: Claimant, a member of the Brotherhood of Railway and Steamship Clerks, retired from service of the Gulf, Mobile and Ohio Railroad Company, Carrier herein, on June 15, 1960 after having rendered compensated service sufficient to qualify for a vacation in fifteen previous years. He rendered compensated service of 120 days in 1960.

At the date of his retirement Article 8 of the Vacation Agreement of December 17, 1941 as amended by Article I, Section 5, of the August 21, 1954 Agreement controlled his rights to vacation, setting out a minimum requirement of 133 days of compensated service in 1960 to be eligible for vacation or pay in lieu thereof in 1961. There is no question since he was

retiring under provisions of the Railroad Retirement Act that had he served the 133 compensated days as required at that time that he would have been eligible for a 1961 vacation payment.

This grievance arose with the adoption of the Agreement of August 19, 1960, further amending Article 8 of the Vacation Agreement of 1941 as previously amended by the Agreement of August 21, 1954, and, in the same Agreement, by Article IV, Section 1 amending Article 8 of the Vacation Agreement of 1941 as amended by the Agreement of 1954.

Article IV, Section 1 of the Agreement of August 19, 1960 reads in part:

> "Article 1 of the Vacation Agreement of December 17, 1941, as amended by the Agreement of August 21, 1954, is hereby amended to read as follows:
>
> * * * * *
>
> "(c) Effective with the calendar year 1961, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has fifteen (15) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years, not necessarily consecutive."

The Brotherhood points out that Claimant was, during the previous calendar year, 1960, an employe who rendered compensated service on not less than one hundred (100) days and met all the other tests. Having done so, contends the Brotherhood, the Claimant has earned and is entitled to vacation pay in lieu of the earned vacation for 1961.

The Carrier in turn contends that Section 1 is a general qualifying provision and any rights of the Claimant are defined specifically by Section 8 as amended and found in the August 19, 1960 Agreement at Article IV, Section 2, as follows:

> "Article 8 of the Vacation Agreement of December 17, 1941, as amended by the Agreement of August 21, 1954, is hereby amended, effective September 1, 1960, to read as follows:
>
> "The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Article 1 hereof. If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified therefor under Article 1. If an employee thus entitled to vacation or vacation pay shall die the va-

cation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference."

The issue in this matter thus turns on the effect of the phrase "effective September 1, 1960" found in the introduction of Article IV, Section 2.

It is the opinion of this Board that the effect of the said phrase was to allow the inclusion of the newly enumerated classes of former employes to be paid along with those already entitled classes for vacation earned according to qualification under Article I without waiting for January 1, 1961, the general effective date of the whole agreement.

Carrier points to Second Division Award 4284 in which on identical facts the Board said:

> "We are unable to find any retroactive effect of the new agreement of August 19, 1960 which would bring this claimant within the ambit of the 100 qualifying days as set out in the agreement."

But is it necessary to seek retroactive effect? In a long line of cases arising under the August 21, 1954 Agreement amending the Vacation Agreement there has emerged unanimous consent that a vacation earned in a given year shall be compensated under the Agreement in effect in the year in which the vacation would normally be taken. See Second Division Awards 2151 thru 2155, 2157 thru 2162, 2166, 2232 thru 2237, 2242, 2247, 2269, 2275, 2278, 2279, 2280, 2283, 2289, Third Division Awards 7336, 7368, 7483, 7651, 8025, 8367, and Case No. RYA-1-E, Special Board of Adjustment No. 469.

In the majority of these cases the Claimant qualified for and was paid for a 1954 vacation of 10 days upon retirement in 1953, prior to January 1, 1954, the effective date of the new agreement. Claimant then was held in 1954 to be entitled to an additional 5 days vacation pay under the liberalized terms of the new agreement which became "effective January 1, 1954".

The Board in Award No. 7336 said, "The amount to be paid can be governed only by the agreement applicable to the year in which it is payable", and since the amount to be paid is predicated on what rights have been earned then such rights must be governed by the agreement applicable to the year in which such rights are recompensable.

If the parties to an agreement can change, effective in a given calendar year, what amount of vacation has been qualified for by retired employes in a previous calendar year, why could they not also change, effective in a given calendar year, what would qualify a retired employe for a vacation in a previous calendar year? It is the opinion of this Board that they could do so, and, by the subject agreement, they did do so.

In the words of Article IV, Section 2: "The vacation provided for in this Agreement shall be considered to have been earned when the employe has qualified under Article I hereof." Claimant has so qualified.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.

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