

Award No. 14476
Docket No. CL-12695

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5008) that:

(1) Carrier violated the current Clerks' Agreement when it failed and refused to pay Mrs. Mary Irvine, an employe who retired under the provisions of the Railroad Retirement Act, the vacation allowance for 1961 which she had earned for service performed in 1960.

(2) Carrier shall now pay to Mrs. Mary Irvine the vacation allowance she is due, namely, fifteen (15) days' pay.

EMPLOYEES' STATEMENT OF FACTS: On June 18, 1960, Mrs. Mary Irvine, an employe in Carrier's Dining Car and Hotel Department with seniority date of July 3, 1938, retired under the provisions of the Railroad Retirement Act.

Prior to her retirement, Mrs. Irvine had rendered compensated service of more than one hundred days during the year 1960. Additionally, she had more than fifteen years of continuous service and had, during such period, rendered compensated service sufficient to qualify for a vacation of fifteen days during the years 1960, 1959 and 1958 prior to her retirement.

There is no dispute between the parties over the fact that Mrs. Irvine did fulfill all of the requirements set out in Article 1 (c) of the Vacation Agreement as amended by the August 19, 1960 Agreement prior to her retirement. The dispute in this instance is over the question of whether or not the claimant is entitled to the liberalized conditions of the August 19, 1960 Agreement. Carrier has declined Mrs. Irvine's claim to a fifteen-day vacation allowance for service performed during 1960 on the contention that Article IV, Section 1 (c) of the Chicago Agreement of August 19, 1960 did

not become effective until the calendar year 1961 and claimant had retired prior thereto. Claim has been progressed on the property in the regular manner and with all applicable time limits up to and including the highest officer of the Carrier designated to consider such matters, without settlement of the claim. See Employees' Exhibits Nos. 1, 2, 3 and 4.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant, Mrs. Mary Irvine, retired under the provisions of the Railroad Retirement Act June 18, 1960. Mrs. Irvine qualified in 1959 for a vacation in 1960 and was paid for that vacation in 1960. Claim for an additional three weeks' vacation pay for the year 1960 has been denied on the basis that Mrs. Irvine retired prior to the signing of and the effective date of agreement signed at Chicago, Illinois, August 19, 1960.

OPINION OF BOARD: Claimant had a seniority date of July 3, 1938. She retired under the provisions of the Railroad Retirement Act on June 18, 1960.

Prior to retirement, Claimant had rendered compensated service of more than one hundred days during the year 1960. Also, she had more than fifteen years of continuous service and had, during such period, rendered compensated service sufficient to qualify for a vacation of fifteen days during each of the years 1960, 1959 and 1958.

It is not disputed that prior to retirement Claimant fulfilled all the requirements of Article IV, Section 1 (c) of the Vacation Agreement, as amended by the August 19, 1960 Agreement.

The issue is whether Claimant is entitled to the liberalized provisions of the August 19, 1960 Agreement.

It is Carrier's position that Article IV, Section 1 (c) of the August 19, 1960 Agreement did not become effective until the calendar year 1961; and, since Claimant had retired before that time she did not qualify for the emoluments provided for therein. It cites Second Division Award No. 4284 in support of its position.

The precise issue was before us in our recent Award No. 14453. In accord with that Award and for the reasons stated therein we will sustain the instant Claim.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1966.