



Award No. 14586
Docket No. MW-12442

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it failed and refused to allow retired District Gang Foreman Walter W. Fleming pay in lieu of fifteen consecutive work days' vacation due for the year 1960.

(2) Because of the violation referred to in Part (1) of this claim the Carrier now be required to allow Mr. Walter W. Fleming pay for the fifteen consecutive work days' vacation due him at the time of his retirement.

EMPLOYEES' STATEMENT OF FACTS: The Claimant District Gang Foreman has been in the Carrier's continuous service since August 6, 1928.

The Claimant rendered a sufficient number of days of compensated service during each of fifteen years prior to the year 1959 to qualify for a paid vacation in each of such succeeding years.

The Claimant rendered 105 days of compensated service during the year 1959 and requested and was granted an authorized leave of absence from June 20 throughout the remainder of that year because of his own sickness.

On December 17, 1959, the Claimant made application for and was subsequently awarded an annuity under the provisions of the Railroad Retirement Act, which was retroactively effective from June 20, 1959.

The Employees contend that the 105 days of compensated service rendered by the Claimant during the year 1959, coupled with the 30 calendar sick days to which he was entitled for vacation qualifying purposes, qualified the Claimant for and entitled him to payment for the fifteen days' vacation due him for the year 1960 at the time of his retirement on December 17, 1959.

The Claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimant Walter W. Fleming entered the service of this Carrier August 6, 1928. He rendered compensated service for the Carrier on 105 days in the period beginning January 1 and ending June 19, 1959. Pursuant to an application filed with the Railroad Retirement Board on or about December 17, 1959, the claimant was awarded an annuity under Section 2(a) 1 of the Railroad Retirement Act effective as of June 20, 1959, or on the date following the last day of compensated service rendered by Mr. Fleming.

OPINION OF BOARD: Article 1, Section 1(f) of the August 21, 1954 Agreement provides that "calendar days in each current qualifying year on which an employe renders no service because of his own sickness . . . shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of . . . a maximum of thirty (30) such days for an employe with fifteen (15) or more years of service with the employing Carrier."

The issue in dispute in this case is whether or not Claimant qualified in 1959 for fifteen days' vacation due in 1960 under the then existing provisions of the 1941 Vacation Agreement and amendments thereto.

As of January 1, 1959 Claimant had rendered fifteen or more years of continuous service with the Carrier and was eligible during 1959 to receive a maximum credit of thirty (30) days, because of sickness, in computing the 133 days of qualifying service in 1959 for a vacation in 1960.

Claimant rendered one hundred five (105) days of compensated service from January 1 to June 19, 1959, at which time because of sickness, he requested and was granted a leave of absence under the rules of the applicable agreement. Subsequently, on December 17, 1959 Claimant made application for an annuity under provisions of the Railroad Retirement Act, and in so doing submitted his resignation, thus relinquishing all rights to return to the Carrier's service.

Claimant sought payment for 15 days' vacation earned in 1959 on the basis of his 105 days of compensated service coupled with the maximum credit of 30 calendar sick days for vacation qualifying purposes as provided in Article 1, Section 1(f) of the 1954 Agreement. Carrier declined the payment because Claimant's last day of compensated service was on June 19, 1959 and his annuity under the Railroad Retirement Act was effective as of the following day, June 20, 1959.

In support of its position, Petitioner cites Second Division Award 4045, *Machinists and St. Louis-San Francisco Railway*, involving a claim identical in principle with the instant case. There, Claimant had worked 125 days as of July 3, 1959 when he was granted a sick leave, and he subsequently was granted a disability annuity effective July 3, 1959. Carrier argues here that Award 4045 is distinguishable and should not be followed in this case because the machinist Claimant applied for and was granted a disability annuity.

The basic question with which we are here concerned is not the type of annuity Claimant applied for and was granted, but whether, under Article 8

of the Vacation Agreement (and the June 10, 1942 interpretations) Claimant's employment relation with the Carrier terminated on June 19, 1959 — the last day worked — or on December 17, 1959 when he made application for his annuity. The parties' interpretation of Article 8 reads:

"(1) An employee's employment relation is not terminated when (a) laid off or cut off on account of force reduction if he maintains rights to be recalled; or (b) on furlough or leave of absence; or (c) absent on account of sickness or disability."

Although it is true that Claimant last worked on June 19, 1959, that clearly was not the date on which his employment relation was terminated. Nowhere in the record does Carrier deny or challenge Petitioner's statement that Claimant requested and was granted a leave of absence because of sickness. Under these circumstances, his seniority and employment relation were not terminated until December 17, 1960 when he relinquished his rights by resigning and applying for his annuity. As of that date, including the maximum credit of 30 sick days, Claimant had the required 133 or more days of qualifying service in 1959 which entitled him to 15 days' vacation with pay in 1960.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1966.