



Award No. 15413
Docket No. CL-16058

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

CHICAGO UNION STATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5927) that:

(1) The Chicago Union Station Company (hereinafter referred to as the Company) violated the provisions of the effective Clerks' Agreement when it failed and refused to properly pay Gottlieb Lanz and Ernest Hall, employees retired under the provisions of the Railroad Retirement Act, the full vacation allowance, in lieu of vacation, due for the calendar year 1965.

(2) The Company shall be required to pay Gottlieb Lanz and Ernest Hall an additional five (5) days of compensation in lieu of 1965 vacation not granted in accordance with the provisions of Article IV — Vacations, of the Agreement signed at Chicago, Illinois, November 20, 1964.

EMPLOYEES' STATEMENT OF FACTS: Mr. Gottlieb Lanz, who held a seniority date of November 15, 1933, resigned from Company service on July 16, 1964 to accept an Old Age Annuity under the Railroad Retirement Act. During the period January 1, 1964 up to and including July 16, 1964 Mr. Lanz performed sufficient compensated service to qualify for vacation in the year 1965. Upon separation from Company service, he was allowed 15 days' vacation pay, in lieu of 1965 vacation due, for vacation earned in the year 1964.

Mr. Ernest Hall, who held a seniority date of August 16, 1921, resigned from Company service on September 19, 1964 to accept an Old Age Annuity under the Railroad Retirement Act. During the period January 1, 1964 up to and including September 19, 1964 Mr. Hall performed sufficient compensated service to qualify for vacation in the year 1965. Upon separation from Company service, he was allowed 15 days' vacation pay, in lieu of 1965 vacation due, for vacation earned in the year 1964.

Claims were filed by the Brotherhood on February 16, 1965 and was progressed up to and including the highest officer designated by the Company to handle such disputes.

Conferences were held in an effort to resolve this dispute. However, it was quite apparent at the last conference, held on November 9, 1965, that the Company has assumed an adamant position regarding the issue at hand and that an impasse had been reached. Consequently, this dispute is now before your Honorable Board for adjudication.

COMPANY'S STATEMENT OF FACTS: The claimants, Mr. Lanz and Mr. Hall, in this case retired from Company's service on July 16, 1964 and September 19, 1964 respectively. Both claimants had worked a sufficient number of days in 1964 to qualify for vacation in 1965 under the provisions of the Vacation Agreement of December 17, 1941, Article 1 of that Agreement, as amended by the Agreement of August 21, 1954 and the Agreement of August 19, 1960. These agreements provided for a vacation of fifteen (15) days for an employee with fifteen (15) or more years of service.

At the time of Claimants' retirement both were paid in lieu of fifteen (15) days' vacation in accordance with Article 8 of the Vacation Agreement, as amended and in effect on that date, which was the time of their service termination with this Company.

The claim presented in this instance is based on the amendments to the Vacation Agreement referred to in the National Agreement signed on November 20, 1964 to become effective January 1, 1965 or almost five and one-half months after Mr. Lanz's termination of employment and almost three and one-half months after Mr. Hall's termination of employment, neither claimants having employee status when the agreement was signed, nor when it became effective.

Moreover, the claim was not presented within the time limit specified in Article V of the August 21, 1954 Agreement, having been presented on February 16, 1965, or more than 60 days from the dates of the occurrences (claimant's retirement), and more than 60 days from the date of November 20, 1964 Agreement.

OPINION OF BOARD: Claimants, Messrs. Lanz and Hall, retired from Carrier's service on July 16, 1964 and September 19, 1964 respectively.

Each had the required "qualifying years of service" and had rendered compensated service the required number of days in 1964, prior to their retirement, to qualify for the maximum vacation in 1965.

Upon retirement each was given only 15 days' pay in lieu of their 1965 vacation.

On November 20, 1964 the parties signed an agreement wherein Article IV, Section 1(d) reads as follows:

"(d) Effective with the calendar year 1965, an annual vacation of twenty (20) 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 twenty (20) 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 twenty (20) of such years, not necessarily consecutive."

On February 16, 1965 claims were duly filed for the additional five (5) days' vacation pay provided in the November 20, 1964 agreement partially quoted above.

The Carrier denied the claims and, briefly stated, its position is as follows:

1. The claim was not timely presented.
2. Claimants were paid in lieu of vacation at time of retirement in strict accord with the agreement then applicable and the agreement, upon which the claim is based, did not become effective until after Claimants retired.

Thus two questions have been presented in this claim:

1. Are Claimants entitled to five (5) additional days vacation pay?
2. Was the claim timely filed?

The precise questions presented in this claim were resolved in favor of Claimants in recent awards 14292, 14293, 14453 and 14476 and, although those awards concerned the August 19, 1960 agreement, the principles therein apply with equal force to the 1964 agreement and, for the reasons stated therein, we find those awards controlling. We will sustain the claims.

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 the Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1967.

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