

Award No. 15913
Docket No. MW-14417

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to allow former Section Laborer Louis J. Geiger pay for the 1962 vacation of fifteen (15) work days which he had earned in 1961 and in years prior thereto. (Carrier's File 97-11-11-17.)

(2) The Carrier now be required to pay Claimant Geiger for the 1961 vacation of fifteen (15) work days which he had earned but did not receive.

EMPLOYEES' STATEMENT OF FACTS: The claimant was employed as a section laborer at New Ulm, Minnesota, with seniority as of May 7, 1942. On or about June 1, 1961, the claimant was injured while in the Carrier's service and a recurrence of this injury prevented the claimant from performing his duties after July 11, 1961.

Because of his service to the Carrier in 1961 and in years prior thereto, the claimant earned a right to receive fifteen (15) work days of vacation with pay in 1962, and the claimant was scheduled to commence his vacation on June 15, 1962.

On March 26, 1962, the claimant signed a "Release with Resignation", which reads:

"For the sole and only Consideration of Eighteen Thousand Five Hundred Dollars (\$18,500), the receipt and sufficiency of which are hereby acknowledged, I hereby **RELEASE** and forever discharge **CHICAGO AND NORTH WESTERN RAILWAY COMPANY**, and all other persons, firms and corporations from any and all liability on account of any and all injuries (**BOTH KNOWN AND UNKNOWN, AND THE CONSEQUENCES THEREOF, WHETHER DEVELOPED OR UNDEVELOPED**), damages to property, and all other damage sustained by me at or near New Ulm, Minnesota, on

Dear Mr. Geiger:

The only information we have is that you are no longer employed by the Railway Company, and we have no authority to enter any vacation time for you on payroll.

Sincerely,

/s/ R. J. Stotka
Roadmaster

RJS/a"

Claim was timely and properly presented and handled at all stages of appeal, up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1961, together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: In 1961 claimant performed sufficient service for the railway company to qualify for vacation in the year 1962.

On or about June 1, 1961, claimant while employed as a section laborer at New Ulm, Minnesota, was injured. As a result of this injury, claimant brought suit against the railway company. This suit was settled prior to trial upon payment of the sum of \$18,500, and a resignation release secured, a copy of which is attached as Carrier's Exhibit A. The resignation and release executed by claimant in settlement of his law suit provided in part:

"For the sole and only Consideration of EIGHTEEN THOUSAND FIVE HUNDRED Dollars (\$18,500.00), * * * I hereby RELEASE and forever discharge CHICAGO AND NORTH WESTERN RAILWAY COMPANY * * * together with every other claim or demand of every kind whatsoever against the Released parties accruing prior to the date hereof."

Subsequent to the payment of the \$18,500 and execution of the release as indicated by Carrier's Exhibit A, claim was presented in favor of claimant for three weeks' vacation pay. Claim has been denied as this claim, together with all other claims in behalf of claimant occurring prior to the date of the release were satisfied in full by the payment of \$18,500 as provided in the release.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case had worked a sufficient number of days for the Carrier in 1961 to qualify for a vacation in 1962. In June of 1962, he became injured, and as a consequence of which filed suit against the Carrier in the appropriate Court. On March 26, 1962, prior to the trial of this case, the Claimant signed the following "Release with Resignation."

"For the sole and only Consideration of Eighteen Thousand Five Hundred Dollars (\$18,500), the receipt and sufficiency of which are hereby acknowledged, I hereby RELEASE and forever discharge

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, and all other persons, firms and corporations from any and all liability on account of any and all injuries (BOTH KNOWN AND UNKNOWN, AND THE CONSEQUENCES THEREOF, WHETHER DEVELOPED OR UNDEVELOPED), damages to property, and all other damage sustained by me at or near New Ulm, Minnesota, on or about June 1, 1961, while a section laborer, and on all claims, demands and causes of action arising from, growing out of, or connected with the same, together with every other claim or demand of every kind whatsoever against the Released parties accruing prior to the date hereof. In particular, this RELEASE discharges all claims alleged in a certain complaint in an action brought against Chicago and North Western Railway Company by me in the District Court of State of Minnesota, County of Nicollet, Fifth Judicial District, which action I hereby direct to be dismissed on the merits and with prejudice, but without costs.

Furthermore, I hereby RESIGN from the service of said Railway and waive any right I might have to continued or future employment.

I know that \$18,500 is all I will receive for my claims, and no other representations or promises have been made to me; and this sum is paid solely in compromise of my claims, liability for which is denied.

This RELEASE shall not be construed, directly or indirectly, as an admission of liability, and IT RELEASES BOTH KNOWN AND UNKNOWN INJURIES.

I have read and understand this release of all claims and am intentionally releasing any claim I may have for both known and unknown injuries.

Signed at Minneapolis, Minnesota, this 26 day of March, 1962.

/s/ Louis J. Geiger [SEAL]

Witnesses to signature:

/s/ Frank R. Brady

/s/ Jean Mrugola

STATE OF MINNESOTA)

) ss.

COUNTY OF)

On this 26 day of March, 1962, before me personally appeared Louis J. Geiger to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

/s/ Frank R. Brady
(Notary Public)"

The Claim in the instant case is for pay in lieu of vacation for 1962 and the sole question to be answered is whether or not the above "Release"

includes this claim. Petitioner alleges that it was not included, while the Carrier maintains the opposite.

A procedural time limit defense was raised by the Carrier, but inasmuch as it appears from a reading of the record that this defense was not advanced during the handling on the property, we must disregard it in accordance with Decision 5 of the National Disputes Committee.

Proceeding now to the merits of the case, the Petitioner contends that the claim did not accrue prior to March 26, 1962, the date of the release, and relies on Article 8 of the Vacation Agreement to support its position. That Article provides:

"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 succeeding year if the employee has qualified therefor under Article 1. If an employee thus entitled to vacation or vacation pay shall die, the vacation 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 of his estate, in that order of preference. (As amended by Agreement of August 19, 1960)"

The key sentence in the above cited Vacation Agreement is the first sentence. It provides indisputably that the Vacation shall be considered to have been earned when the employee has qualified under Article 1 hereof. Article 1, among other things, provides that an annual vacation of 15 consecutive work days with pay will be granted to the employee who renders compensated service for 100 days during the preceding calendar year. Hence, the very day that the Claimant rendered the 100th day of compensated service was the day that his claim accrued. That date preceded the signing of the release by several months. However, by signing the "Release with Resignation", quoted infra, Claimant has effectively waived his rights to the claim as submitted. The specific words in that release which make this claim nugatory are "all claims, demands and causes of action arising from, growing out of, or connected with the same, together with every other claim or demand of every kind whatsoever against the released parties accruing prior to the date hereof." (Emphasis ours.)

The instant claim had accrued prior to the date of Release. Claimant should have made an appropriate exception in the Release if he wanted to receive his vacation pay. By not doing so, he renounced it. The Release is a General Release, and is very common in our system of Jurisprudence. By its very nature and essence it is general in its coverage and need not be specific as to an individual claim. For the foregoing reasons, we will deny the claim.

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 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 not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.