

Award No. 7488

Docket No. CL-7561

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

Kuzma Kriletich shall now be allowed five (5) additional days compensation in lieu of 1954 vacation not granted in accordance with the provisions of Article I, Vacations, of the Agreement signed at Chicago, Illinois, August 21, 1954.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date of October 1, 1940 (hereinafter referred to as the Agreement) and a National Vacation Agreement dated December 17, 1941, including interpretations thereto (hereinafter referred to as the Vacation Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. There is also in evidence an Agreement between the parties signed at Chicago, Illinois, August 21, 1954, by and between the participating Eastern, Western and Southeastern Carriers and Employees represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto, which Agreement (hereinafter referred to as the Chicago Agreement) was in effect on the dates involved in the instant claim. A copy of the Agreement, Vacation Agreement and Chicago Agreement is on file with this Board and by reference thereto they are hereby made a part of this dispute.

2. Mr. Kuzma Kriletich (hereinafter referred to as the Claimant) entered the service of the Carrier on February 27, 1918, and by virtue thereof established said date as his seniority date on Clerks' Seniority Roster No. 3 of Carrier's Western Division. While occupying position of Delivery Clerk, Fifth and Kirkham Streets Freight Station, Oakland, California, the Claimant applied for and was granted an annuity under the provisions of the Railroad Retirement Act. His last day of service for Carrier was July 31, 1953, and when the Claimant received his compensation for service performed during July, second period of 1953, the Carrier included in this payroll voucher an additional ten (10) days compensation at the applicable straight time rate of his assigned position in lieu of his 1954 vacation.

It will be noted that Section 8 of the Vacation Agreement of May 17, 1944 is identical to Article 8 of the Vacation Agreement of December 17, 1941 (here involved) and that the Committee denied the claim on the basis that the employee's employment relation terminated with the effective date of his annuity and as a result thereof he was not in the service of the carrier on the effective date of the Vacation Agreement.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant voluntarily retired from the service of the Carrier under the provisions of the Railroad Retirement Act as of August 1, 1953. Claimant had performed sufficient compensated service in 1953 and prior years to qualify for a vacation of 10 days in 1954 under the Vacation Agreement of December 17, 1941, as modified by the 40 hour week agreement of March 19, 1949. He was allowed payment in lieu of such 10 days at the time of his retirement.

The claim is that he is entitled to an additional 5 days under the terms of the August 21, 1954 National Vacation Agreement.

The question in this case is the same in all essential respects as those presented in Awards Nos. 7336, 7368 and 7483 of this Division and Awards 2151 and 2231 of the Second Division. For the reasons set forth in those Awards, the claim must be sustained.

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

That the parties waived hearing on this dispute; and

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 5th day of December, 1956.