

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward A. Lynch, Referee

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**PARTIES TO DISPUTE:**

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

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

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

(a) The Carrier violated and continues to violate the rules of the working agreement when it fails to properly pay vacation allowances to J. S. Phipps, Zack Bennett, S. O. Grubbs, and M. Mayo and that—

(b) It now be required to pay the said J. S. Phipps, Zack Bennett, S. O. Grubbs and M. Mayo fifteen consecutive working days vacation in 1954 for compensated service earned during year 1953.

**EMPLOYEES' STATEMENT OF FACTS:**

J. S. Phipps retired on Pension December 15, 1953  
Zack Bennett retired on Pension December 31, 1953  
S. O. Grubbs retired on Pension December 31, 1953  
M. Mayo retired on Pension December 31, 1953.

Each of these men had worked the required number of years and required number days entitling them to full vacation rights.

The Carrier paid each of them for ten working days.

The committee handled with Mr. D. E. Farrar, Assistant to President, requesting that they be paid an additional five (5) work days under provision of Washington Agreement signed at Chicago August 21, 1954.

The Carrier refused to pay these men such additional allowance. Copies of exchanged correspondence attached marked Brotherhood Exhibit A-1 and A-2.

**POSITION OF EMPLOYEES:** These four men have been in continuous service of the carrier for a number of years and during that time worked regular and earned the necessary time for vacation allowance.

They each retired on Pension during December 1953 to be effective as of December 31, 1953.

The Agreement signed in Chicago August 21, 1954 amends the vacation agreement effective with January 1, 1954.

Paragraph (c) of Article 1, Section I, provides for an allowance of 15 working days when earned as provided in such article. These men earned this vacation.

The Carrier refuses to pay the additional five days, claiming that as these men retired as of December 31, 1953 they were not entitled to same.

The Committee prays that your Honorable Board instruct the carrier to pay proper vacation allowance as provided in the amended Vacation Agreement.

It is affirmed that all data cited and arguments used herein have been presented in substance to the carrier in writing or in conference.

**CARRIER'S STATEMENT OF FACTS:** Article 1, Section 1, of the August 21, 1954 National Agreement between the various Carrier's Conference Committees and the Fifteen Co-operating Railway Labor Organizations (representing the parties here involved), amended Article 1 of the December 17, 1941 National Vacation Agreement covering these employees of the Carriers represented by the non-operating organizations.

Paragraph (c) of Article 1, Section 1, of the August 21, 1954 agreement provides:

"(c) Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than 133 days during the preceding calendar year and who has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive."

Each of these four employees had more than fifteen continuous years of compensated service at the time of their retirement. Each one had qualified in 1953 for a vacation in 1954 and were paid, at the time of their retirement, in lieu of a 1954 vacation of two weeks.

Claim was filed in 1954 for additional allowance in lieu of the third week's vacation for each of these men. Claim was denied on the basis that each of these employees had retired prior to the effective date of Article 1, Section 1, of the August 21, 1954 agreement and were not due any additional payment.

**POSITION OF CARRIER:** It is our position that as these four men retired prior to beginning of the calendar year of 1954 (January 1, 1954), they are not due the additional allowance in lieu of the third week's vacation.

Claim should be denied and you are earnestly requested to so hold.

All data contained herein have been made known to representatives of claimants by correspondence or in conference as is shown by Exhibits 1 to 7 attached hereto and made a part hereof.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The August 21, 1954 National Agreement amended Article 1 of the December 17, 1941 National Vacation Agreement

by increasing to 15 consecutive work days the vacation of employees who rendered "compensated service on not less than 133 days during the preceding calendar year and who (had) fifteen or more years of continuous service and who, during such period of continuous service (render) compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive."

The 1954 Agreement stipulated that the change in vacation, which comprises Article 1, Section 1(c), would be "effective with the calendar year 1954."

Three of the claimants here petitioning had retired December 31, 1953 and the fourth claimant retired December 15, 1953 under the Railroad Retirement Act.

Carrier concedes each claimant "had qualified in 1953 for a vacation in 1954 and was paid, at the time of his retirement, (for the 10 work days then required) in lieu of a 1954 vacation of two weeks."

Organization now seeks for each claimant pay for the additional 5 work days provided by the August 21, 1954 Agreement, because the claimants "earned this vacation."

Carrier's position is "that as these four men retired prior to beginning of the calendar year of 1954 (January 1, 1954,) they are not due the additional allowance in lieu of the third week's vacation; the employment relation of the claimants was terminated before the effective date of the increase in vacation period under the August 21, 1954 Agreement; an employee retiring before January 1, 1954 was not an employee covered by the Agreement (of August 21, 1954); in order to qualify for such benefits under Section 2 (a and b) of the Railroad Retirement Act, it is necessary for an applicant to relinquish all his rights to return to the service of the employer."

We have examined the Awards offered by or in behalf of the parties and their respective positions. We believe certain Awards cited on behalf of Organization's position, particularly Awards 7336, 7368, 7483 and Second Division Awards 2151 and 2162, are compelling, particularly because they cover claims identical in nature to those here before us.

Article 8 of the 1941 Vacation Agreement reads as follows:

"No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a Carrier has terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

Second Division Award 2151 (Carter), held:

"We desire to point out that the amendment of Section 1(c), Article 1, Vacation Agreement of December 17, 1941, does not provide that it becomes effective January 1, 1954, as contended by the Carrier. This misconception is based on the words 'effective with the calendar year 1954.' Of course, the calendar year 1954 commenced on January 1, 1954. But the meaning of the words 'effective with the calendar year 1954' is that any earned vacation for the calendar year 1954 shall be fifteen (15) days under this section. Consequently when claimant had earned a vacation for 1954 as provided by Section 1 (c), he was entitled to fifteen (15) days' vacation or the equivalent thereof in money. The retroactive feature applies to any vacation earned for 1954 and not to employees in the service of the Carrier on January 1, 1954, as the Carrier contends. \* \* \* Of course, there was but ten (10) days' pay due on December 1, 1953, but an additional

five (5) days' pay became due when the agreement of August 21, 1954 was negotiated and made retroactive for the year 1954. This is no different than any other agreement providing for retroactive pay increases."

Second Division Award 2162 (Carter) and Third Division Awards 7336, 7483, 7488 (Cluster) and 7368 (Rader) concur with the findings in Second Division Award 2151.

Accordingly, the claim will be sustained.

**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 has been violated.

#### AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1957.