

Award No. 8156
Docket No. MW-7915

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris G. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
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 retired Section Laborer O. P. Sampont payment in lieu of the five additional work-days of 1954 vacation earned by Claimant Sampont in 1953 and preceding years, and due him under the vacation Agreement as amended effective with the calendar year 1954.

(2) Claimant Sampont now be allowed five days' pay at the same rate for which he was paid ten days' pay in lieu of ten days' vacation in 1954.

EMPLOYES' STATEMENT OF FACTS: During the year 1953, Mr. O. P. Sampont performed in excess of 133 days of compensated service while employed as a section laborer and had similarly performed the required number of days of compensated service to entitle him to a ten-day vacation during the calendar year of 1954.

Also, Mr. Sampont had performed more than the required number of days of compensated service in each of fifteen years prior to 1954 (not necessarily consecutive) to entitle him to a fifteen-day vacation in 1954, or pay in lieu thereof, under the provisions of the Vacation Agreement as amended which became effective as of January 1, 1954.

Mr. Sampont performed no service for the Carrier after December 31, 1953; intending to make application for an annuity under the provisions of the Railroad Retirement Act. The Carrier allowed Mr. Sampont pay in lieu of ten days of his 1954 fifteen-day vacation earned by the claimant in 1953.

On February 10, 1954 the claimant's application for an annuity was filed with the Railroad Retirement Board. under the provisions of the Railroad Retirement Act had been approved

Subsequently, the claimant was advised that his application for annuity retroactive to and effective as of January 1, 1954.

"Boston and Maine Railroad will not grant Carl L. Harris one week's vacation with pay. Decision: (2-23-45).

"The committee is agreed that since the employee's annuity in this case was effective on November 13, 1943, on which date he severed his employment relation with the Carrier, he is not entitled to a vacation in 1944. **He was not in the service of the Carrier on the effective date of the Vacation Agreement.**" (Emphasis added.)

The agreement referred to in the quotation above became effective on January 1, 1944.

In the instant dispute, the agreement became effective January 1, 1954. Claimant retired on December 31, 1953. He was not in the service of Carrier on the effective date of the agreement providing for three weeks vacation. Since he was not in Carrier's service on the effective date of that agreement, he is not subject to the provisions thereof, and is not entitled to the benefits thereof.

There is no merit to the instant claim, and it must be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: As already noted in Award No. 8155 this day announced, the docket in the instant case involves the same Carrier and the same issue and requires the same disposition and what we said in Award No. 8155 is applicable here.

Therefore we hold that the Carrier in the instant case violated the Agreement in refusing to pay the claim.

The claim should 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

The Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.