

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

George S. Ives, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES****KANSAS CITY TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5073) that:

(1) Carrier violated the current Clerks' Agreement when it failed and refused to pay R. E. Stephens, E. Fox, S. L. Walker, O. H. Kerr, O. G. Wilson, Mack Mathews, R. L. Harris, A. A. Warner and W. E. Plaskett the vacation allowances for 1961 which they had earned for service performed in 1960.

(2) Carrier shall now pay the employes named in part (1) hereof the vacation allowances they are due, namely, fifteen (15) days' pay at their appropriate rates in lieu of 1961 vacations.

EMPLOYEES' STATEMENT OF FACTS: The facts are not in dispute. Claimants named above were employed by the Carrier in its Mail and Baggage and Passenger Departments prior to their retirement on annuities payable under the Railroad Retirement Act.

All of the claimants had 15 or more years of qualified compensated service and absent their retirement would have received 15 days' paid vacation in 1961.

The following table lists the claimants, date of their retirement and the number of compensated days of service accumulated in 1960 and creditable days of sick leave:

R. E. Stephens	5-31-60	102 days
E. Fox	5-31-60	108 days
S. L. Walker	6-27-60	128 days
O. H. Kerr	6-18-60	120 days

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 or his estate, in that order of preference."

The letters filing these claims are set out as Exhibits 1, 2, 3, to this submission. Exhibits 4 and 5 are the replies of the Department Heads involved. Exhibit 6 is the appeal of the General Chairman to the Manager of Personnel; and Exhibit 7 is his reply.

As is apparent from these facts and exhibits the issue for each of the claimants is the same. All of them retired before the signing of the Agreement of August 19, 1960; all performed less than 133 days of compensated service which was the requirement laid down by the Agreement of August 21, 1954; all performed (or were credited with) more than 100 days of compensated service which is the new requirement of the Agreement of August 19, 1960.

It is the Carrier's position that (1) the claims are not valid because the Agreement does not cover these employees who retired before its effective date; and (2) even if a valid claim had existed for them, it was barred by the failure to present it within sixty (60) days of August 19, 1960 or at least within sixty (60) days of September 1, 1960 when the newly revised Article 8 became effective.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim for additional vacation pay is based upon amendments to Article 1 of the December 17, 1941 National Vacation Agreement, which are contained in the Agreement of August 19, 1960. Claimants retired in 1960 prior to the execution of the Agreement of August 19, 1960. Claimants either had taken vacation during that calendar year before retirement or had received vacation pay earned under the Agreement then controlling, which was the National Vacation Agreement of December 17, 1941, as amended, August 21, 1954.

One of the requisites for an annual vacation with pay of fifteen (15) consecutive work days had been one hundred and thirty three (133) qualifying days of compensated service during the preceding calendar year and at the time of their retirement, none of the Claimants had sufficient service to qualify them for an earned vacation during the calendar year 1961. Article IV (c) of the Agreement of August 19, 1960 reduced the number of qualifying days required during the preceding year to one hundred (100) and the Claimants had sufficient service to meet this amended requirement which became effective with the calendar year 1961.

Carrier's position is that the claim is not valid because the Agreement of August 19, 1960 does not cover employees who had retired before its execution or effective date and alternatively, that the claim is barred by failure to present it within sixty (60) days after execution of the Agreement on August 19, 1960 or within sixty (60) days from the effective date of the newly revised Article 8 of the National Vacation Agreement on September 1, 1960.

It is well established under Awards of this Board that vacations are earned during the year or years preceding the particular calendar year in which they are taken. In the instant case, Claimants had earned the vacations for which their service during 1960 qualified them even though they performed no

service during the following year and had terminated their employment by retiring before the execution of the Agreement of August 19, 1960. The pertinent amendments to Article 1 of the National Vacation Agreement, executed on August 19, 1960 and effective with the calendar year 1961, are necessarily retroactive as eligibility for fifteen (15) days of vacation is based upon active service requirements during the preceding year. (Awards 7336, 7368, 7483, 8025, 8367, 14292 and Case No. V-BRT-69 E, Special Board of Adjustment No. 651.) Therefore, the Claimants were entitled to receive an additional five (5) days of vacation pay provided by Article 1 of the National Vacation Agreement, as amended by the August 19, 1960 Agreement, the only provision which is concerned with the computation of vacations earned during 1960.

Alternatively, Carrier contends that the Claim is barred under paragraph 1 (a) of the Time Limit Rule as it was not filed within sixty (60) days from the date of the occurrence on which the claim is based. Although the agreement relied upon by Claimants was executed on August 19, 1960, the amendments on which the instant claim is bottomed did not become effective until January 1, 1961. Carrier also argues that Article 8 of the National Vacation Agreement as revised on August 19, 1960 is applicable. The amendments to Article 8 of said Agreement became effective on September 1, 1960 and in part provide that when an employee's "employment status is terminated for any reason whatsoever including . . . retirement" he will be paid for vacation earned but not granted in preceding years and also pay for "the vacation for the succeeding year if the employee has qualified therefore under Article 1. Carrier's contention is that the sixty (60) day time limit during which claims may be filed commenced to run on September 1, 1960, the effective date of the amendments to Article 8 of the National Vacation Agreement.

The fallacy found in Carrier's contentions concerning the timeliness of the claim arises from the fact that Claimants were not entitled to be paid for additional vacation earned for the succeeding year under Article 1 of the National Vacation Agreement until the amendments to Article 1, which were executed on August 19, 1960, became "effective with the calendar year 1961." Claimants had retired before September 1, 1960 and were not entitled to additional days of vacation for 1961 until the effective date of the amendment reducing the number of qualifying days of service during the preceding year required for fifteen (15) days of vacation with pay. Although the Claimants had earned fifteen (15) days of vacation or payment in lieu thereof during the calendar year 1960 prior to their retirement, the obligation on the part of the Carrier did not mature until the calendar year 1961.

We find persuasive the opinion in Award No. 9850, which held that Article 5, Section 1 (a) of the August 21, 1954 National Agreement, commonly known as "the Time Limit Rule," must be considered in conjunction with the following interpretation of Article 5 of the December 17, 1941 National Vacation Agreement, issued on June 10, 1942.

"As the vacation year runs from January 1 to December 31, payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year; if not so paid, shall be paid on the payroll for the first payroll period in the January following, or if paid by special roll, such payment shall be made not later than during the month of January following the vacation year."

The instant claim was timely filed in March 1961, and is properly before us for determination. In view of the foregoing, we shall sustain the claim.

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

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1966.