

Award No. 15502

Award No. MW-16011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & 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 pay retired Crossing Flagman M. A. Gilmore the full vacation allowance to which entitled for the calendar year 1965. (Carrier's file M-1 026-65.)

(2) The Carrier shall now be required to pay Claimant M. A. Gilmore for five (5) additional vacation days in accordance with Article IV of the Agreement of November 20, 1964."

EMPLOYES' STATEMENT OF FACTS: After completing work on September 30, 1964, Mr. M. A. Gilmore retired under the provisions of the Railroad Retirement Act. As of the date of his retirement, the claimant had rendered compensated service on not less than one hundred (100) days during the 1964 calendar year; he had twenty (20) or more years of continuous service and had, during such period of continuous service, rendered compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of twenty (20) such years, not necessarily consecutive.

On November 20, 1964, the vacation agreement was amended so as to increase from fifteen (15) days to twenty (20) days any and all vacations which had been earned in 1964 on the basis of service records similar to the claimant's record as set forth above.

The Carrier paid the claimant for only fifteen (15) days of the 1965 vacation he had earned in 1964 and has steadfastly refused to allow him the additional five (5) days of vacation pay earned by him in 1964.

Two previous disputes between these same parties which involved similar issues, facts, principles and rules were adjudicated by this Division's Awards Nos. 8155 and 8156, which sustained the position and claim of the employees.

Claim was timely and properly presented and handled by the employees 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, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts:

CARRIER'S STATEMENT OF FACTS: The claimant in this case retired from Carrier's service on September 30, 1964. He had rendered a sufficient number of days of compensated service in 1964 to qualify for a vacation in 1965 under the provisions of the Vacation Agreement of December 17, 1941, Article 1, as amended by the Agreement of August 21, 1954 and the Agreement of August 19, 1960. These agreements provided for a vacation of fifteen (15) days for employees with fifteen (15) or more years of service.

At the time of claimant's retirement on September 30, 1964, he was paid in lieu of fifteen (15) days' vacation in accordance with the provisions of Article 8 of the Vacation Agreement, as amended and in effect on that date, which was the date of the termination of his employment status.

The claim in the instant case has been progressed by the Union on the basis of the amendments to the Vacation Agreement dated November 24, 1964 which became effective January 1, 1965. In other words, the claimant's employment status was terminated two months before the amendment referred to was signed and three months before the agreement became effective — he was not an employee when the agreement was signed, nor when it became effective.

Moreover, the claim was not presented within the time limit specified in Article V of the August 21, 1954 Agreement, having been presented on February 19, 1965, or more than 60 days from the date of the occurrence (claimant's retirement), and more than 60 days from the date of the November 20, 1964 Agreement.

The schedule of rules agreement effective September 1, 1949 and amendments thereto, including the National Vacation Agreement and its amendments, are by reference made a part of this submission.

OPINION OF BOARD: The precise issues involved in this case have already been consistently dealt with by us in many other cases. Most recently in our Award No. 15413. There is nothing in this record which impels us to change our opinion.

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 allowed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1967.