



Award No. 15612
Docket No. CL-15842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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-5865) that:

(a) The Carrier is in violation of the applicable provisions of the amended vacation Agreement of November 20, 1964, when it declines to afford Harry E. White and M. L. Selby an additional five days' pay in lieu of 1965 vacation, and;

(b) The Carrier shall pay claimants White and Selby the additional five days' compensation.

EMPLOYEES' STATEMENT OF FACTS: Claimants in this docket retired from the service of the Carrier May 31, 1964, and had 20 or more years of service and sufficient number of compensated days in 1964 prior to their retirement to earn compensation for three weeks in 1965 in lieu of vacation.

There is an agreement in effect between the parties negotiated and subsequently revised on several occasions affording employees represented by the Brotherhood vacations with pay subject to qualifications. The vacation agreement as of date of retirement of claimants appears as Appendix O in the Agreement of October 1, 1942, as reprinted and revised as of June 1, 1961, copies of which have been furnished the Third Division, Articles 1 (c) and 8 thereof read as follows:

"1 (c) Effective with the calendar year 1961, 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 one hundred (100) days during the preceding calendar year and who has fifteen (15) or more years of continuous service and who, during such period of continuous service renders 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 fifteen (15) of such years, not necessarily consecutive."

"(d) Effective with the calendar year 1965, an annual vacation of Twenty (20) consecutive work days with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty (20) or more years of continuous service and who, during such period of continuous service renders 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) of such years, not necessarily consecutive."

OPINION OF BOARD: Claimants retired under the provisions of the Railroad Retirement Act on June 1, 1964. Prior to retirement they had been in continuous service for 20 or more years and had otherwise fulfilled all the requirements of the Vacation Agreement, as amended by the November 20, 1964 Agreement.

It is the Carrier's position that the liberalized provisions provided for in the November 20, 1964 Agreement, which became effective January 1, 1965, has no application to employes who retired prior to January 1, 1965. This position is similar to that taken by this Carrier as well as other Carriers in disputes decided by our Awards 14292, 14293, 14453 and 14476, all of which rejected such contention.

Alternatively, in this dispute Carrier takes the position that the claims were not timely filed. The liberalized provisions of the Vacation Agreement became effective January 1, 1965. The claim was filed on March 3, 1965. Similar issue was involved in our Award 14453 involving these same parties and it must be held, therefore, that the claim was timely filed. Also see Award No. 38 of Special Board of Adjustment No. 194.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1967.

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