

Award No. 4644
Docket No. 4603
2-P&LE-TWUOA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, A. F. of L.-C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY
AND THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That the Pittsburgh and Lake Erie Railroad Company restore to Mr. Peter Butchko, Carman in Youngstown, Ohio, who is on a Disability Pension, his Annual Pass Rights.

That the Carrier was discriminatory in its action when they failed to grant Claimant free transportation by issuance of an Annual Pass.

That the Carrier violated Rule 19 of the Agreement between the Parties.

EMPLOYES' STATEMENT OF FACTS: Mr. Peter Butchko hereinafter referred to as claimant, was regularly employed as a carman on the Pittsburgh and Lake Erie Railroad Company, in Youngstown, Ohio.

Claimant was first employed by the carrier on September 1, 1922 and continues to be shown on the carrier's carman seniority roster.

Claimant was injured in January, 1956 and is unable to return to work because of injuries received on the property of the carrier.

Claimant instituted legal action against the carrier to recover damages incurred due to the injury sustained in January, 1956.

Carrier denied the claimant pass privileges for the year 1957 and each subsequent year until the present time.

Claimant applied for and received an annuity from the Railroad Retirement Board account of disability due to the injury sustained in carrier's employment.

This claim was processed on the property in accordance with the applicable agreement in effect on the property up to and including the highest officer of the carrier designated to handle such disputes. This case is identified on the Property as P&LE-TWU-CASEY-211.

Should the board, however, assume jurisdiction in this dispute, carrier submits the request was not handled in accordance with the Railway Labor Act. Not only is the request barred under the time limit on claims provisions of the carmen's agreement, but the Doctrine of Laches also creates an estoppel against its progression.

Carrier's position in this case is supported by awards of the National Railroad Adjustment Board, judicial decision and acquiescence with carrier's policy by representatives of other labor organizations.

If the claim is not dismissed on the basis of lack of jurisdiction, it should be denied as being without merit.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant's annual pass was revoked in 1957. In 1959 he executed a general release of all claims or grievances. Thereby he relinquished any grievance he may have possessed respecting the revocation of his annual pass.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4644

DOCKET NO. 4603

The majority in rendering a denial award of the claimant's (Peter Butchko) request to restore his pass privileges is erroneous.

Rule 19 (a) of the current agreement between the parties reads as follows:

"(a) Employes covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employes in service."

The rule makes no exceptions with respect to the status of employees.

The majority in their findings state the following:

"Claimant's annual pass was revoked in 1957. In 1959 he executed a **General Release of all claims or grievances**. Thereby he relinquished any grievance he may have possessed respecting the revocation of his annual pass." (Emphasis ours)

The release executed by the claimant as shown in carrier's Exhibit 2 is not a general release. The release reads as follows:

"I do further understand and agree that I have read this release and that this sum is being paid to me on the basis of my claim that I am permanently and totally disabled from ever returning to work for the railroad company and I agree that I will make no attempt to return to the service of the said railroad company."

The release was executed as a condition of settlement in a damage claim arising from an injury sustained by the claimant while in service of the carrier and does not have any application with respect to any claim or grievance arising under the provisions of the collective agreement or Railroad Retirement Act. Therefore, in view of the provisions of the collective rules agreement and evidence of record the award should have been in the affirmative.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink