

Award No. 6068
Docket No. 5937
2-CRI&P-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement the Carrier has improperly denied Carman R. L. Sims his System Annual Pass on the Chicago, Rock Island and Pacific Railroad.

2. That accordingly the Carrier be ordered to properly apply the Agreement and restore this Pass.

EMPLOYEES' STATEMENT OF FACTS: Carman R. L. Sims, hereinafter referred to as the claimant is employed as a carman by the Chicago, Rock Island and Pacific Railroad, hereinafter referred to as the carrier, at Silvis, Illinois with a seniority date of September 25, 1953.

On November 21, 1966 the claimant was on duty for the carrier in the outbound train yard when he climbed through a string of cars when he slipped and fell injuring his back and chest. At the spot where he was climbing through the cars there was rotten feed on the ground from a leaking box car. Mr. Sims sought to settle with the claim agents of the carrier and upon failure to secure what he believed to be just compensation, filed damage suit in the Civil Court.

In March of 1969 Mr. Sims was forced to surrender his Annual Pass by Master Mechanic Kelly at Silvis, Illinois because he had filed suit against the carrier.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it.

The agreement effective October 16, 1948, as subsequently Amended is controlling.

Petitioner, while progressing this claim on the property, placed a great deal of emphasis on Second Division Award 3079, with Referee Thomas A. Burke. On similar issues, Referee Burke held:

"The policy of the carrier in lifting the pass of the claimant because he filed suit against it is another effort to deprive the claimant of the protection of the courts."

There is no evidence in the instant case that the carrier's revocation of annual passes serves to discourage the filing of personal injury suits in a court of law. Particularly, petitioner has produced no evidence showing that this claimant, or any other employe, covered by the effective agreement have been denied the protection of the courts, by such action. Award 3079 does not serve as a sound precedence in the claim at hand.

In conclusion, the carrier has shown that petitioner has recognized by its conduct, that the carrier has the right to revoke annual passes under the situation evident in this case. Petitioner is now estopped, at this late date, from contesting this long-standing policy. Therefore, it must be found that the carrier was well within its rights to revoke claimant's annual pass. The record does not substantiate that claimant was discriminated against in violation of Rule 42 as he was treated the same as other employes within the service of the carrier. The carrier submits that this claim should be denied in line with the pronouncement of Referee Grady Lewis in First Division Award No. 11727 wherein he observed:

"Neither the hospital benefits nor the pass privileges are matters over which this division has any control; the one is governed by rules of the hospital association, the other by the liberality of the management.

This division may direct justice, it cannot demand generosity."

Here, petitioner seeks nothing more than a gratuity. This board cannot demand generosity. Accordingly, the claim should be found without substance or agreement support and accordingly denied.

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 waived right of appearance at hearing thereon.

Claimant's pass was revoked in March 1969 because he brought suit against the Carrier for damages due to personal injury. The relevant provision of the Agreement is Rule No. 42, which reads as follows:

"Employes covered by this agreement will be granted the same free or reduced rate rail transportation courtesies, for themselves

and families, as is granted other employes, as distinguished from subordinate officials, covered by agreements; subject to laws, rules and regulations in effect from time to time."

The Organization contends that Claimant was denied the same treatment "as is granted other employes." It cites Awards No. 1880 and No. 3079 as supporting its position. The Carrier contends that the pass is a gratuity, that its granting is a prerogative of management, that Carrier has complied with Rule No. 42 because its pass policy for carmen has been exactly the same as for members of the other crafts, that revocation in this instance was in accord with policy it has consistently followed for several decades with regard to all employes including, in several instances, employes represented by the petitioning Organization, and that the claim must therefore be disallowed on the doctrine of quasi estoppel.

We recognize that the granting of passes is a gratuity and that Carrier has the right to make and revise its pass policies so long as they are in accord with the provisions of Rule No. 42 and are not unreasonable, arbitrary, or discriminatory. In our opinion the particular policy here involved establishes an unreasonable classification of employes, is arbitrary, and is discriminatory against those employes who have brought suit. We conclude that it is contrary to the provision of Rule No. 42.

This finding is consistent with our Awards No. 1880, No. 3079, and No. 3227 on the same issue.

The claim of quasi estoppel is rejected because the Organization contends that it was unaware of this policy and has taken no previous position on it and because there is no clear showing to the contrary.

AWARD

The claim is sustained in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.