Award No. 189
Docket No. 176
2-IC-CM-'37

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: The allowance of Division, Northern Lines, Southern Lines and System Service Card Passes for coach cleaners.

JOINT STATEMENT OF FACTS: All skilled employes, their helpers and apprentices, covered by the agreement between the Illinois Central System and System Federation No. 99, are issued service card passes. The issuance of service card passes is based on the number of years of continuous service, i. e.:

Over 5 and under 10 years.....	Good on division on which employed; for employe only.
Over 10 and under 15 years....	Good on Grand division on which employed; for employes only.
Fifteen years service and over..	Good on System; including wife, if living, but not any other member of the family.

Coach cleaners subject to the agreement between the Illinois Central Railroad Company and System Federation No. 99 are not now granted service card passes.

POSITION OF EMPLOYES: That Rules 50 and 146 of the agreement between System Federation No. 99 and the Illinois Central System are being violated by the carrier at Memphis, Tenn., and other points on that system.

> **"Rule 50.** Employes and those dependent upon them for support, will be given the same consideration in issuing free transportation as is generally granted other employes in the service."

> **"Rule 146.** Coach Cleaners will be included in this agreement and receive overtime as provided herein. Coach Cleaners at outlying points may be worked eight hours within a period of ten consecutive hours. They may be assigned to any other unskilled work during their eight-hour period of service."

It has been the established practice for the carrier to issue to all employes (excluding coach cleaners) covered by the present agreement who have been in the service five (5) years, division annual card passes, ten (10) years

Northern or Southern Line annual card passes, depending upon the territory the employe is residing in, fifteen (15) years System annual card passes.

Employes contend that the failure of the carrier to issue annual card passes to coach cleaners is a violation of the above rules.

POSITION OF CARRIER: Rule 50 merely assures employes coming under this agreement the same consideration as is granted other employes in the service. The limitations of such consideration are within managerial prerogative. The rule itself presents the conclusion that there is to be some differentiation in the issuance of free transportation. Were it intended that the considerations should be identical, there would be no place in the clause for the term "generally."

Service card passes have never been issued to coach cleaners, laborers, truckers, porters, cinder pit men, engine cleaners, fire kindlers, front-end painters, headlight cleaners, roundhouse tool and oil men, sand dryers, sweepers, tank cleaners and other employes in comparable classes of service. However, under equivalent service requisites, they can secure free trip passes of territorial scope equivalent to that accorded any other class of employes.

The carrier has refrained from issuing card passes to certain classes of their employes, because they have experienced some difficulty in the issuance of free transportation to certain classes of employes, who have a greater number of illiterate persons among their group.

The carrier contends that Rule 50 was negotiated and adopted to permit a continuation of practice then in effect; that no change has been made in their practice with respect to the issuance of free passes since its negotiation; that its meaning is clear and that any change in practice is a responsibility of the management.

OPINION OF THE DIVISION: In our opinion, in view of Rule 146, coach cleaners are clearly within the terms of Rule 50 and, therefore, are entitled to the same treatment as are other employes governed by the agreement. The argument of the carrier with reference to the word "generally" contained in Rule 50 is not persuasive and would not be a reasonable construction of this rule. We find no limitation in Rule 50 authorizing a discrimination as to coach cleaners.

It is clear from the record that when coach cleaners were included in the agreement embodying the particular rules here involved, it was the understanding that such coach cleaners should have the same privileges and rights under all the rules as all other employes governed by the agreement.

The fact that porters, cinder pit men, engine cleaners and other laborers are not given annual passes in the same manner as employes under the agreement herein involved is not pertinent. The employes enumerated are not within the terms of this agreement.

Without doubt, the carrier's contention that many coach cleaners may be illiterate is true, but under our form of government and with our nation-wide system of free public schools, it cannot be permanently so. That racial prejudice should have any part in the decision of this Board is unthinkable. Furthermore, the difficulties that may arise in the issuance of annual passes to such employes can easily be dealt with by resourceful management. Rules 50 and 146 clearly have given coach cleaners the right to these annual passes and the carrier cannot now be heard in violation of these rules. The right to withhold card passes from coach cleaners has been bargained away and, therefore, the position of the carrier cannot be sustained.

The claim of the employes must be sustained.

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.

The parties to said dispute were given due notice of hearing thereon.

That the carrier has violated its agreement with System Federation No. 99 by refusing to issue service card passes to coach cleaners under the agreement between the carrier and the System Federation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.