

Award No. 3079
Docket No. 2625
2-SOU-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements the Carrier has improperly denied Hubert J. Puckett System Annual Pass on the Southern Railway Lines.

2. That accordingly the Carrier be ordered to properly apply the agreements and restore this pass.

EMPLOYEES' STATEMENT OF FACTS: Hubert J. Puckett, herein-after referred to as the claimant is employed by the Southern Railway Company, as machinist at the carrier's Atlanta, Georgia Shops. Seniority date May 4, 1936.

On April 11, 1955 Machinist Puckett, while employed on his regular assignment, was caught in a flash fire and suffered near fatal burns.

Following his partial recovery, claimant sought to settle with the designated claim agents of the carrier and upon failure to secure what he believed to be just compensation, filed damage suit in the Civil Court.

At the time this accident occurred the claimant was working in the carrier's Maintenance of Way Department as pump repairer (composite mechanics) and upon sufficient recovery was allowed to return to the Maintenance of Equipment Department of the carrier. This by agreement of representatives of the carrier and of the organization, seniority being common between the two departments.

In 1955 while the Claimant was at work, negotiations with the carrier's claim department having broken down and the claimant having entered damage suit in the Civil Court, claimant was required by the master mechanic at Atlanta, Georgia to hand in to his office system annual pass previously issued to him.

The telegraphers' agreement provides that:

"Rule 39—Transportation

Employees covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted employees of similar class in similar grades of service."

The Maintenance of Way agreement provides that:

"Passes—Rule 66:

Employees covered by this agreement and those dependent upon them for support will be given such free transportation as is consistent with pass regulations of the company."

Article 12(b) of the dispatchers' agreement provides that:

"Train dispatchers and their dependents shall be granted transportation privileges in accordance with the law and the rules and regulations of the Company."

The yardmasters' agreement provides that:

"Transportation—Rule 20:

Yardmasters and their dependents shall be granted transportation privileges in accordance with the law, rules and regulations of the Company."

There are no free transportation rules in agreements with operating employees, and all rules dealing with this matter in agreements with non-operating employees recognize management's unrestricted right to grant or not to grant free transportation. This fact is recognized in Rule 50 of the shop crafts' agreement here in evidence. Thus, the association's contention that Claimant Puckett has a contract right to a system annual pass on the Southern Railway System Lines is simply **not** supported by the agreement.

In these circumstances, the Board cannot do other than make a denial award.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 contends that the controlling agreement has been violated in that claimant has been improperly denied a System Annual Pass on the Southern Railway System Lines.

The carrier contends that the granting of a pass is discretionary with the carrier and is nothing but a gratuity and cites the language of the Emergency Board created by the President in Executive Order 10511, that a pass "is a gratuity * * * and as such should be left under the control of the Carrier".

We concede that the granting of a pass is a gratuity and is under the control of the carrier. The carrier at its option may issue passes good on the entire system or passes on its own railroad, or no passes at all but according to Rule 50 of the agreement it must give the claimant the same consideration as other employees in service.

In Awards 67 and 189 this Division held that Rule 50 is enforceable. Award 1880 of this Division is in point, at least to the extent that it holds that the lifting of a pass for filing suit is a violation of Rule 50 of the agreement. (Rule 44 in that case.)

The carrier contends that because of its policy of lifting the passes of all employees who bring suit, that in lifting the pass of the claimant herein, it was treating him the same as all other employees similarly situated; but Rule 50 does not say "similarly situated". It says "employees covered by this agreement * * * will be given the same consideration * * * as is granted other employees in service".

In Award 1254 of this Division it was held "The Carrier has, under Rule 33, the right to dismiss employees for cause, but the bringing of a legal action against it by an employee, * * * is not cause within the meaning of the rule for to so hold would be against public policy".

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.