

Award No. 3227
Docket No. 3038
2-GN-FO-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Roundhouse Laborer Ephumia H. Steele was unjustly denied free transportation due her.
2. That accordingly, the Carrier be ordered to furnish Mrs. Ephumia H. Steele free transportation in accordance with agreement provisions.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Ephumia H. Steele, hereinafter referred to as the claimant, was first employed by the Great Northern Railway Company, hereinafter referred to as the carrier, as a laborer at the Hillyard (Spokane, Washington) roundhouse of the carrier July 16, 1943. As of May 1, 1954 the facilities of the Hillyard Roundhouse, Hillyard Shops and the Spokane, Coeur d' Alene and Palouse Roundhouse were consolidated, with the claimant retaining the same seniority date on the consolidated laborers' roster. Claimant has continuous service since July 16, 1943.

Under date of February 18, 1957 the claimant made application on the standard pass request form, also by letter, for a trip pass from Spokane, Washington to Seattle, Washington and return, which request was denied by the carrier.

Prior to February 18, 1957 claimant was granted free transportation by the carrier in or about May 1947—Spokane, Washington to Montreal and return, and in or about May 1948—Miles City, Montana to Spokane, Washington, as evidenced by copy of statement submitted herewith as Exhibit A.

Under the pass regulations in effect on the Great Northern Railroad, employees with over three months service are entitled to two system passes, six

5. Since the claimant, Mrs. Steele, was not, nor yet is, an "employee" as defined in Section 1, Fifth, of the Railway Labor Act, and since the jurisdiction of your Board, per the terms of paragraphs (h) and (i) of Section 3 of the Railway Labor Act, is limited to disputes involving employees and arising "between an employee or group of employees and the carrier or carriers," this claim of the organization, in addition to being completely devoid of merit, is improperly before your Board.

Since carrier has conclusively shown herein that this claim is completely lacking in merit of any form, it must be denied, for to find otherwise would have the effect of granting to the employees a rule they do not now have, nor ever have had, in addition to destroying a time honored prerogative which through the years has been reserved solely to management.

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.

It is claimed here that "Ephumia H. Steele was unjustly denied free transportation due her". The issue is controlled by Rule 40 of the current agreement reading:

"Employees and those dependent upon them for support will be given the same consideration in issuing free transportation as it granted other employees in the service".

In denying the pass request the carrier made it clear that the reason was because she had brought suit, and that "quite a number of * * * employees who have brought suit * * * have been denied * * * passes as a result".

In defense the carrier argues that passes are a gratuity; that the organizations have included pass rights in rules demands which were denied; and that consequently the carrier is at liberty to set its own policy. The argument concludes that the company policy of denying passes to employees who sue, applies equally to all employees and hence does not violate the rule, because the same consideration is granted to all.

The Second Division has consistently held that such action is unjustly discriminatory. In similar, but slightly different cases, the First Division has decided the opposite.

Rule 40 contains no exception of employees who sue. In its simplest meaning, Rule 40 requires that "employees * * be given the same consideration * * * as * * * other employees. By negotiating and agreeing to this expression, both the organization and carrier spelled out the overall conditions governing the issuance of free transportation.

We conclude that by setting a policy which singles out a class of employees, namely those who sue, and excepts them from the rule, the carrier has added a

factor and has enlarged the conditions thereby denying some employes the "same consideration" and violates the rule.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1959.