Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7445
SECOND DIVISION Docket No. 7286-I
2-LI-I-'78

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

Parties to Dispute: (Howard M. Patterson
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(Long Island Rail Road

Dispute: Claim of Employes:

Petitioner claims that he is entitled to and should be granted pension credit for services rendered as an employee of Pennsylvania Railroad prior to the date of his employment by Respondent Long Island Railroad commenced. The applicable provisions of the Long Island Railroad Company Pension plan provide that such credit be given to Petitioner.

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.

The Claimant, Howard M. Patterson, was an employee of the Penn Central Transportation Company from June 16, 1945 until August 6, 1974. He was hired as a Car Inspector by the Long Island Rail Road on May 3, 1968, while continuing to perform full time service for the Penn Central. His dual employment as a full-time employee of both companies continued until August 6, 1974. On August 1, 1975, as he neared his 60th birthday, the Claimant made application to the Board of Managers of Pensions for a determination of his "Credited Service Date" under the Long Island Rail Road Pension Plan. As effective July 1, 1974, the plan allows for "Credited Service" for an individual's period of continuous employment with another carrier-employer, provided he transfer directly from such carrier-employer to employment with the Company. Credit for service prior to May 3rd, 1968 was disallowed. The Claimant then appealed to the Joint Board on Pension Applications for a review of the decision of the Board of Managers. The Joint Board affirmed the decision of the Board of Managers.

The Carrier contends that this dispute does not come under the jurisdiction of the National Railroad Adjustment Board; and that the dispute is procedurally defective in that it has been progressed to the Board in violation of the Railway Labor Act, Circular No. 1 of the NRAB, and Rule 53 of the Carmen's Agreement. These contentions are rejected for the reasons set forth in Public Law Board No. 1691, Award No. 5, which Award we do not find to be in error. See also Public Law Board 1840, Award No. 8.

The Petitioner contends that the Claimant is entitled to "Credited Service" toward his Long Island Rail Road Pension based upon his service with the Pennsylvania Railroad in accordance with the terms of Article I, Section 4(B)(ii) of the Company Pension Plan. The Carrier disagrees.

The crux of this dispute, Counsel for the Claimant states, is whether or not Petitioner "transferred directly" from another carrier-employer to service with the Long Island Rail Road. Article I, Section 4(b)(ii) provides:

> "(ii) For a person who is an Employee prior to July 1, 1971, Credited Service shall also include an individual's period of continuous employment with another carrier-employer covered by the Railroad Retirement Act, provided he transferred directly from such carrier-employer to employment with the Company; and further provided that he would have received credit for such employment as Credited Service had such employment been employment with the Company rather than such carrier-employer during such period." (Emphasis added)

The Claimant contends that a reasonable and prudent interpretation of the clause "transferred directly" is that an employee can and should receive credited service if the employee transferred--that is, went from one employer to the other--without a dormant period or break in continuous service. The Carrier contends "transfer" means leaving one place and going to another; just as when one transfers from a train, he leaves it to go to another.

We find that the Claimant in the instant case had not "transferred directly" from the employment of the Penn-Central to the Long Island Rail Road in May of 1968 or any date thereafter. The clear, plain and obvious meaning of "transfer" is to move oneself, as from one location, job or school to another. The Claimant did not "transfer" from the Penn Central to the Long Island Rail Road in May of 1968, for he did not move himself from one job to another job--from the Penn Central to the Long Island--but rather continued his employment with the Penn Central while working the Long Island position. Clearly the word "transfer" is not in anyway descriptive of the dual employment relationship established in May of 1968 and continued by the Claimant until August 6, 1974. The language of the Pension Plan is absolutely clear and unequivocal; and under such circumstances it is well settled that this Board cannot give language a meaning other than that expressed. While the

Petitioner presents arguments in support of the Petitioner's case based on equity and fairness, in order to sustain the claim the Board would have to rewrite the language of the Plan, and we have no such power. We are compelled to deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of January, 1978.