

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

CENTRAL OF GEORGIA RAILWAY COMPANY
(M. P. Calloway, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks' Freight Handlers, Express and Station Employees, that,

(1) The Carrier violated the rules of the Clerks' Agreement when, on June 1, 1942 it arbitrarily removed Clerk T. C. Farr from his position in the Car Accountant's Office, and that,

(2) Clerk T. C. Farr shall now be restored to his position and compensated for all time lost since his arbitrary removal and at salary of \$191.60 per month, his regular and correct salary, and that,

(3) Carrier shall henceforth be restrained from removing from the service employees under this Agreement account their attaining to any specified age.

EMPLOYEES' STATEMENT OF FACTS: Effective June 1, 1942, Clerk T. C. Farr, Per Diem Clerk in the Office of Car Accountant, Savannah, Ga., salary of \$191.60 per month was, without investigation or hearing, removed from his position in violation of rules of the Clerks' Agreement.

On April 22, 1942, Car Accountant Mr. D. W. Brantley, handed a letter to employe Mr. T. C. Farr, which read as follows:

"Savannah, Ga. April 22nd, 1942.

Mr. Farr:

I quote the following letter from Mr. Pollard, contained in Comptroller's letter of July 9, 1937, file C-15053:

'Effective August 1, 1937, the Central of Georgia Railway will not continue in service employees who have reached the age of 70 years, retirement being required on the last day of the month in which such birthday occurs.

'Please arrange to extend this information to those in your department who will be affected thereby in the near future, in order that they may in ample time, arrange to secure application blank from the Railroad Retirement Board, Washington, D. C., to promptly qualify them for annuities provided under the Retirement Act, thereby preventing interruption in connection in compensation between the time of leaving our service and the inauguration of payments by the Government.'

continued so until the year 1920. They again were certified as the representatives in June 1940, and took over the contract then in force, which was made with the former representatives, The Central of Georgia Clerks' Organization.

Since the inauguration of the Pension Plan on July 1, 1917 to July 1, 1937, (The date the Railroad Retirement Act went into effect) there have been 36 clerks retired under the plan, 26 or 72.22% account of age limit and 10 or 27.78% account of disability. These clerks have enjoyed the benefits of the plan without cost to them. Since July 1, 1937 there have been 27 clerks retired, 14 or 51.85% account of age limit and 13 or 48.15% account of disability.

The present claimant, Mr. Farr entered Carrier's service on July 1, 1887, and was in active service on July 1, 1917, the date pension plan went into effect—he was 45 years old and had 30 years service and was eligible on that date, if he became disabled, to retirement on a pension of \$33.68 per month. His equity in the plan increased from year to year with this added service and increased wages, and therefore has been protected under the plan all through these years without cost to him.

Carrier contends there is no merit in this claim and that as there has been no violation of any Schedule Rule, the Board has no jurisdiction in this case.

OPINION OF BOARD: The compulsory retirement of claimant on pension amounted to a dismissal from the position he held. He was relieved of the duties and deprived of the emolument appertaining to it. His separation from the position, having been accomplished without compliance with Rules 28, 29, 30 and 31, constituted a violation of the agreement.

The carrier seeks to justify its action under section seven of the voluntary pension plan set by the carrier in 1917; and court order No. 203 entered in the receivership proceedings. Both these provided for the compulsory retirement of employees upon reaching the age of 70.

If claimant's right to pension were wholly dependent upon the voluntary pension plan adopted by the carrier in 1917 there would be much substance in the carrier's position. For, it seems clear that, under that plan, it was the uniform practice to retire employees when they reached the age of seventy. Furthermore when the road went into receivership the question was raised as to whether the pension plan could or should be carried on. After a hearing, attended by representatives of the employees, the court entered an order directing that the pension system be continued in effect on the same basis as at the time the Receiver was appointed.

Upon these facts, standing alone, it might well be argued that the employees were estopped to deny the right of the carrier to insist upon compulsory retirement as provided for in Section 7 of the pension plan.

But the facts do not stand alone. The Railroad Retirement Act of 1937 has intervened. This act is effective upon the property of the carrier; and the claimant's pension rights are to be determined by its provisions. It contains no compulsory retirement provision.

But, it is urged in behalf of the carrier that Court Order No. 203, establishing compulsory retirement at the age of seventy, is effective upon the property. This argument ignores the definition of the term "carrier" in section one of the Railway Labor Act. Clearly, the court and its Receivers fall within the definition of "carrier" as therein contained. Now, the Norris amendment to the National Bankruptcy Act [Sec. 77 (n)] provides that "No judge or trustee acting under this Act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railway Labor Act, * * *."

To give Order No. 203 the effect contended for by the carrier would unquestionably change the working conditions of claimant in a manner contrary to the provisions of the Railway Labor Act. For, under that act, his rights are to be determined in accordance with the controlling agreement between the carrier and the Brotherhood. To give force to the order, under the facts of this dispute, would amount to a modification of that agreement. It would sanction the separation of claimant from the position he held without a compliance with Rules 28, 29, 30 and 31; and would destroy his seniority rights.

In the light of the provisions of Section 77 (n) of the Bankruptcy Act the order cannot be held to carry such consequences.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.