

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 & Steamship Clerks that the Carrier should have complied with the request of Clerk E. J. Limehouse of December 30, 1941, and cancelled his Group Life Insurance, and that all deductions made from the compensation of Clerk E. J. Limehouse since December 30, 1941 shall now be refunded.

EMPLOYES' STATEMENT OF FACTS: On December 30, 1941, Clerk E. J. Limehouse of the Office of Auditor of Traffic duly notified Auditor of Traffic Mr. T. J. Peterson that he wished to discontinue his Group Life Insurance certificate, copy of which letter is herewith submitted and identified as Exhibit "A."

On December 31, 1941, Mr. Peterson furnished Mr. Limehouse with copy of Auditor of Disbursements Mr. M. B. Nichols' letter of December 31, 1941 which is self explanatory and is herewith submitted and identified as Exhibit "B."

The matter was subsequently appealed and in Conference March 31, 1942, General Manager Mr. R. R. Cummins rendered decision as follows:

"Docket No. 3: Request of Committee that employe E. J. Limehouse be allowed to cancel Group Life Insurance.

Decision: Declined for the reason that this Company has consistently taken the position that employes entering the service of the Company after Group Life Insurance Plan went into effect on the property, accepted employment with the full understanding that they would be required to take and keep this Group Life Insurance, and this being one of the employment requirements before acceptance, this Company has a right to require these employes to live up to their obligations in this respect. Mr. Limehouse entered the service after the Group Life Insurance Plan went into effect and understood that in accepting employment, he would be required to take and carry this insurance."

Mr. Cummins replied to a supplementary notice served on him by Clerk Limehouse on September 28, 1942, that his decision of March 31, 1942 would not be changed. Mr. Limehouse's letter of September 28, 1942 is herewith submitted and identified as Exhibit "C" and Mr. Cummins' communication is herewith submitted and identified as Exhibit "D."

OPINION OF BOARD: On December 30, 1941, E. J. Limehouse, the employee for whose benefit this claim was filed, notified the Carrier that he desired to discontinue his group life insurance certificate. The request was declined and the correctness of the Carrier's decision is before us for decision.

The record shows that the Carrier entered into an arrangement with the Metropolitan Life Insurance Company whereby group insurance was made available to all employees on and after April 18, 1923. The contract required that 75% of the employees in each group participate in order to keep the group insurance policy in force. Participation of employees at this time was on a voluntary basis.

In 1924, the Carrier for the first time required new employees to participate in the group insurance plan and to continue to carry it during the term of their employment. Limehouse applied to the Carrier for employment on April 1, 1925 and commenced work on April 2, 1925. The application signed by Limehouse did not contain the requirement that he was to carry group insurance and continue to carry it during the term of his employment. The application did contain a provision to the effect that the applicant accepted all conditions under which the application was made and, if employed, that applicant would abide by the rules of the company. It is shown by the record that the requirement as to group insurance was explained to Limehouse before he signed the application.

On November 1, 1929, the group insurance coverage was transferred from the Metropolitan Life Insurance Company to the Sun Life Assurance Company of Canada, at which time all employees then in Carrier's service were given an opportunity to drop or continue the insurance. It was further stipulated by the Carrier that employees electing to continue with the new company, who had entered the service of the Carrier after 1924, would be required to maintain it throughout their employment or as long as the group insurance contract remained in force. It appears that Limehouse did not agree in writing to the continuance of his group insurance in the new company. He did accept and receipt for his certificate of participation from the new company, and has retained it and permitted the deduction of premiums from his pay without objection until his request for cancellation was filed on December 30, 1941.

The record further shows that the Carrier has always paid a substantial part of the premiums on the group insurance policy as they became due. The premium on the \$3,000 certificate held by Limehouse at the time of his attempted cancellation was \$4.44 per month, of which the Carrier paid \$1.95 and Limehouse the balance of \$2.49.

It seems clear to us that Limehouse understood the requirements as to group insurance when he entered the employment of the Carrier. In 1929, when there was a change in the insurance carrier and he had an opportunity to decline the insurance of the new company, he elected to accept a new certificate with full knowledge that if he did so he would be required to keep it in force during the period of his employment. For twelve years he accepted the benefits of the insurance contract and permitted and acquiesced in the reduction of his part of the premium from his pay. He is now estopped to deny that he had a contract with the Carrier with reference to this group insurance or that he authorized a deduction of premiums from his pay. By his conduct he had accepted and ratified the agreement tendered by the Carrier when the change in the insurance carrier was made. He will not be permitted to accept the contract as to its favorable provisions and disavow it when it appears burdensome. He will be deemed to have accepted and ratified the whole contract as made.

The Carrier has at all times had an interest in maintaining group insurance for its employees. Its interest was such that it became a party to the

contract and obligated itself to pay a substantial part of the premium for the benefit of its participating employees. Having obligated itself for the payment of a substantial part of the premium, the Carrier has a legal right to require the performance of the contract as made. It is not the province of the National Railroad Adjustment Board to vacate valid contracts any more than it is its province to create new ones. If the contract as made has become burdensome, it is clearly a matter for negotiation. This Board is powerless to relieve from valid contracts merely because one of the parties thereto has become dissatisfied with its provisions. We think that Limehouse made a valid contract with the Carrier and that this Board is without power to relieve him from its obligation.

It is urged that the deductions made for the payment of the employee's share of the premiums amounts to a reduction in pay contrary to Rule 60 of the Clerks' Agreement. There is no merit in this contention. The employee by his contract authorized the deduction to be made to further the payment of an obligation that he personally contracted. This can no more amount to a reduction of pay contrary to the provisions of Rule 60 than can any other assignment of pay authorized by an employee.

The awards cited by the Clerks' Organization are clearly distinguishable. Award No. 1400, First Division, was based on the fact that there was no agreement between the Carrier and the employee that the latter would continue to keep the group insurance in force during the term of the employment. Award No. 7733, First Division, involved a voluntary application for insurance, there being no contract requiring the employee to continue it in force. Award No. 7955, First Division, involved only a pay reduction authorization to pay insurance premiums, the Carrier having no interest whatever in the insurance contract.

A contract of employment requiring the carrying of group life insurance during the term of the employment is not against public policy; nor is it against public policy for the employee to authorize payment therefor from his pay. Awards Nos. 1829 and 2217, Third Division, though in themselves correct, have no application to the issue here involved.

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 employee involved in this dispute are respectively carrier and employee 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 a deduction in the pay of an employee by the Carrier for the payment of group insurance premiums, pursuant to the contract of the parties, is not violative of the Clerks' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of February, 1944.