

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ATLANTA AND WEST POINT RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of Mr. W. H. Lee for:

(a) Difference between \$163.76 (Helper rate) and \$228.76 (Maintainer rate) from May, 1945 to January 1, 1946.

(b) Difference between \$194.76 (Helper rate received) and \$261.40 (Maintainer rate from January 1, 1946 to May 22, 1946 by increase of 16¢ per hour wage increase) from January 1, 1946 to May 22, 1946.

(c) Difference between \$194.76 (Helper rate received) and \$266.50 (Maintainer rate from May 22, 1946 to date Mr. Lee left service of the railroad August 1, 1946.)

EMPLOYEES' STATEMENT OF FACTS: Prior to entry into the armed forces of the United States, Mr. W. H. Lee was employed by the Carrier as Signal Helper, being used to relieve Signal Maintainers most of the time during his last few months in railroad service.

After entry into military service, it was found that Mr. Lee had certain physical disqualifications which limited him to service in the United States, and the Carrier having need for his services as Signal Maintainer addressed the following letter to Lee for transmittal to Army authorities in the hope that Lee would be released to resume railroad service:

"ATLANTA & WEST POINT RAIL ROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA
GEORGIA RAILROAD

W. R. Peck,
Engineer Maintenance of Way.

Atlanta 3, Ga.
October 30, 1944

Pvt. William H. Lee, ASN-34837603,
Co. A, Class 16 T. Br. ASFTC,
Ft. Francis E. Warren, Wyoming.

Dear Sir:

It is my understanding, due to certain physical disqualifications, you are restricted from overseas service, and can only be used in limited service in the United States.

Maintainer Driver's job in May 1945, and consider Mr. Peck's letter as a Georgia contract, then we would point out that the Georgia law likewise construes these contracts as contracts of employment strictly and at no place in the contract is there an agreement to raise Lee's salary under any conditions whatever and, therefore, any claim for any increase that was given to other people would have to fail, because this increase was not agreed to or promised or contracted for by and between the railroad and Lee, so the contract itself being strictly construed, Lee is not entitled to any raise except through the grace and goodness of the railroad and that part of his claim, wherein he asks for the additional increase, must fall of its own weight.

As we have heretofore pointed out, the organization was not the bargaining agent for Lee at the time of this occurrence; therefore, to reconstruct the contract made by Lee and the railroad would be a retroactive decision.

"Retroactive decision is one which makes and applies a new rule of law, and attaches another and unforeseen liability to a contract after its execution, and is as vicious as an ex post facto statute." *Clancy v. Barker*, 131 Fed. 161-171.

"A statute which impairs obligation of contract or deprives parties of remedies existing when contract was made is in a civil sense a 'retroactive statute.'" *Railroad Coop. Building & Loan Assn. v. Boston Building Estates*, 267 N. Y., Supp. 204.

"A statute which takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed, is to be deemed a retroactive or retrospective statute." *Wilson v. Greet*, 151 Pac. 629.

We again ask that the claim be dismissed for lack of jurisdiction. If your Honorable Board should assume jurisdiction we respectfully request that it be declined for the reasons hereinabove set out.

OPINION OF BOARD: On December 28, 1944, Claimant Lee returned to the service of the Carrier pursuant to a letter, the applicable position of which is as follows: "Should the Army see fit to release you from the armed forces, I hereby certify that the Atlanta-West Point Railroad will immediately re-employ you as Signal Helper at a salary of \$163.76, and should there be a vacancy for a Maintainer, the Railroad will employ you as Signal Maintainer at a salary of \$223.76 per month". On his return to service, he was assigned as a Signal Helper at the agreed upon rate. On November 15, 1945, Lee entered the service of the Georgia Railroad as a Maintainer. There was no agreement between the Signalmen and the Carrier during the times herein mentioned. Signal Department employees were paid monthly rates for all services without overtime. If a Maintainer became ill, his Helper carried on the work without any increase in pay. If he had no Helper, one was assigned and paid the first year Maintainer's rate of pay. The Signal Maintainer, off because of sickness, continued to draw his full pay.

In April 1945, Signal Maintainer Driver was taken sick. His Helper performed his work during his absence with such assistance as was necessary. Driver continued to draw his pay during his absence. It is contended that Driver's absence created a vacancy which Lee was entitled to fill under the terms of the letter previously quoted.

It appears to us that the terms of the letter were not violated during the time Lee was in the employ of this Carrier. He returned to work and was given a position of Signal Helper at the salary stipulated. It seems to us, also, that Signal Maintainer Driver's position never became vacant during the period of Lee's employment. He retained it during his illness, the work thereof being performed in the manner that was customary on that railroad. Consequently, the letter agreement was not violated during the period of Lee's employment with the Carrier.

This result makes it unnecessary for us to pass upon the nature and extent of the liability imposed by the letter agreement, as Lee, in any event, does not have a meritorious claim under the facts here presented.

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

That both parties to this dispute waived hearing thereon;

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

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

No basis for an affirmative award exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1948.