

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the Rules of the Clerks' Agreement when it failed and refused to grant Louis Cervantez free transportation, Sacramento to Los Angeles and return, for himself and those dependent upon him for support; and,

(b) That Carrier shall now grant Louis Cervantez free transportation requested.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which Agreement (hereinafter referred to as the Agreement) is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. Louis Cervantez (hereinafter referred to as the Claimant) entered the service of the Carrier on September 22, 1952, and in accordance with Rule 26(a) of the Agreement, established said date as his seniority date on Sacramento General Stores Seniority Roster No. 1. The Claimant worked continuously until February 28, 1958, at which time, due to reduction in Store Department forces, he was no longer able to occupy a regular assignment in line with his seniority.

3. On or about June 6, 1958, the Claimant submitted a request for round-trip transportation on Carrier's train, Sacramento to Los Angeles, for himself and dependent members of his family to be used when his children would enjoy their school vacation. The request was denied by the General Storekeeper.

OPINION OF BOARD: Claimant held a position as Clerk in Carrier's General Stores. His seniority date is September 22, 1952. On February 28, 1958, Claimant was laid off due to a reduction in the work force. While on layoff, Claimant requested free round trip transportation between Sacramento and Los Angeles for himself, his wife and four children. Carrier declined the request for round trip transportation, but allowed one way free transportation from Sacramento to Los Angeles.

Petitioner contends that Claimant was entitled to free round trip transportation under Rule 58(a) which reads:

"(a) Employees covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in the service."

The question at issue is whether or not Claimant was "given the same consideration in granting free transportation as is granted other employees in the service."

Carrier contends that for at least 30 years it has been Carrier's policy not to allow free round trip transportation to laid off employees. In a letter dated October 13, 1958, Carrier wrote to Petitioner's Division Chairman, in part, as follows:

"The purpose of granting only one-way transportation is to assist laid off employees to travel from the point where they have been laid off to some other city in order to seek employment, not necessarily railroad employment. Therefore, we were correct in declining to furnish round trip transportation in June of this year account Mr. Cervantez and family, a laid off employee, which employee entered service September 22, 1952."

There is some incongruity with the above statement. Carrier is obligated to give laid off employees preference in the order of seniority when the work force is increased or vacancies occur. Specifically, Rule 41(f) says:

"(f) An employee laid off on account of reduction in force, or through displacement, who is unable to displace a junior employee, shall have his name carried on the seniority roster and shall be given preference in order of seniority over other employees when force is increased or vacancies occur, provided the employing officer is currently advised of his address, and in the event no service has been performed for a period of one (1) year, the employee passes satisfactory physical examination. An employee failing to return to service within fifteen (15) days after being notified by registered mail or telegram sent to the last address given, or furnishing good and sufficient reason for not doing so, shall forfeit his accumulated seniority and likewise his employee relationship and shall not be entitled to an investigation under Rule 46 in connection with such termination of employee relationship."

Carrier was obligated to recall Claimant in order of seniority whenever there was an increase in the work force or when a vacancy existed. If Claimant, after receiving free transportation to Los Angeles, had succeeded in finding employment in that city and, if subsequently, a vacancy arose to which Claimant was entitled, he would have had to pay his own transportation back to Sacramento to fill such a vacancy. While Carrier's policy may be honorable, it is not logical.

But the issue does not depend upon the Carrier's alleged policy as above noted. Petitioner made an independent survey of Carrier's policy as applied to train service employes of the same Carrier. This survey, which was submitted to the Carrier in conference, and which appears in the record, may be summarized as follows:

1. Employes in train service holding regular assignments are granted free round-trip transportation.
2. Employes in train service unable to hold regular assignments but called under applicable agreement provisions are also granted free round trip transportation without question.
3. Employes in train service who are given cut-off letters and not subject to call are granted one-way free transportation."

Carrier does not deny this practice for train service employes. It argues only that Claimant is in the same status as train service employes who are given cut-off letters.

Train service employes who are "unable to hold regular assignments but called under applicable agreement provisions are . . . granted free round trip transportation . . ." Claimant, because of force reduction, was unable to hold a regular assignment. He was subject to call under Rule 41(f) whenever there was an increase in the work force or a vacancy existed. We do not see how his position is different from train service employes in category 2.

Train service employes, unable to hold regular positions and are not given cut-off letters, are listed as Extra Employes. They are subject to call whenever a job vacancy exists and the Carrier desires to fill that vacancy. Claimant, too, was unable to hold a regular position and he, too, was entitled to be called in his seniority order when a job vacancy existed which the Carrier elected to fill. Train service employes in category 3 are not subject to such rights.

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

That the parties waived oral hearing;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.