Award No. 1215
Docket No. CL-1219

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Harris L. Danner, Referee

PARTIES TO DISPUTE:

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

WABASH RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim for wage losses suffered by employes J. C. Sullivan and H. C. Jones, employed as time checkers in office of Assistant to General Manager, St. Louis, during period April 1 to December 31, 1933, inclusive. Claim is made for reimbursement in the amount of $126.06, each, account action of the Carrier in applying a greater percent of wage deduction than was provided for in the Chicago Wage Deduction Agreement. Statement listing monthly deductions for which claim is made is submitted herewith and designated as Employes' Exhibit No. 1."

EMPLOYES' STATEMENT OF FACTS: "Under date of March 21, 1933, notice was issued to heads of all departments of the General Offices, Wabash Railway Company, requesting further reductions in salaries of excepted positions and in the clerical forces; changes to become effective April 1, 1933. Copy of this notice is submitted and designated as Employes' Exhibit No. 2.

"As indicated in Employes' Exhibit No. 2, the Carrier deducted wages in the equivalent of three days from the monthly salaries of time checkers Jones and Sullivan during months of April to September, 1933, inclusive. During months of October, November and December, 1933, the equivalent of one and one-half days wages was deducted from their monthly salaries. In addition to these deductions, a further deduction of 10% was made from the remainder of their monthly wages. No claim was filed by F. T. Dolson, occupant of position of head time checker, during period in question.

"Following transfer of timekeeping for road and yard service employes, train and enginemen, to office of Assistant to General Manager at St. Louis, monthly rate of $190.00 was arbitrarily established by Carrier for positions of time checkers to which J. C. Sullivan, Montpelier Division, and H. C. Jones, Decatur Division, were assigned on or about March 1, 1933. Upon complying in part with the provisions of Award No. 63, the Carrier converted monthly rate to daily rate of $7.45, effective September 21, 1935. Bulletin notice dated September 16, 1935, advertising positions of time checkers, rate $7.45 per day, is submitted and designated as Employes' Exhibit No. 3.

"Employes J. C. Sullivan and H. C. Jones were assigned by bulletin notice to positions of time checkers, effective September 21, 1935. Copy of letter written by the Assistant to General Manager, dated September 21, 1935, and copy of notice of assignment, are submitted and designated as Employes' Exhibits Nos. 4 and 5, respectively.

There is in evidence an agreement between the parties bearing effective date of August 1, 1929.

OPINION OF BOARD: This is a claim for wage losses suffered by employes J. C. Sullivan and H. C. Jones, employed as time checkers in the office of the Assistant to the General Manager of the Wabash Railway Company, for the period from April 1 to December 31, 1933. The claims are based upon a prior adjudication entered in Award No. 63 (Docket CL-47) on July 15, 1935. That award adjudicated the rights of said employes to classification within a certain employe class, and embraced the order that they be reimbursed for the same kind of wage losses which they claim herein, retroactive to December 15, 1934. Accordingly, that award covered the same subject that this award covers except that in said Award 63 the period covered was from December 15, 1934, to July 15, 1935. The present claim goes back of that period, and prior thereto, and asks that the employes be reimbursed on the same basis and for the same reason, from April 1, 1933, to December 31, 1933.

This is an attempt on the part of the employes or their representative, the committee, to reopen the case settled by Award 63, and is a clear violation of the well established rule against splitting causes of action. There is neither reason nor justice in a rule which would permit an employe to divide a question into as many parts as may suit his convenience, without regard to the inconvenience thereby occasioned his adversary. There is no reason why the same rule should not apply before this Board as applies in general, forbidding the submission of a claim for damages on instalments in piece-meal fashion; otherwise, the employe could bring as many actions as he desired, covering, say, a week at a time or a few days at a time. In the case of Snell v. Turner Lumber Company, 285 Fed. 356, it was said:

> "Whatever right of action the plaintiffs had for breach of contract of employment, it was indivisible, and one determination of their rights or a recovery is a bar to any further action for damages. In Harrison v. Clarke, 183 Fed. 765, 105 C. C. A. 197, it was said that:
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> > 'The rule is well settled that one having a claim against another, arising either on the breach of contract or for a tort, must recover in one suit for all damages he may suffer because thereof, but is not permitted to split his cause of action and recover in successive suits therefor.'
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> "See, also, Nesbitt vs. Independent District, 144 U. S. 610, 12 Sup. Ct. 746, 36 L. Ed. 562, Cromwell vs. Sac County, 96 U. S. 51, 24 L. Ed. 681, and Srere vs. Gottesman (C. C. A.) 270 Fed. 188.
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> > 'A former judgment is a finality as to the claim or demand in controversy, including parties and those in privy with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Old Dominion Copper Mining, etc. Co. vs. Lewisohn, 202 Fed. 178, 120 C. C. A. 392; Pakas vs. Hollingshead, 184 N. Y. 211, 77 N. E. 40, 3 L. R. A. (N. S.) 1042, 112 Am. St. Rep. 601, 6 Ann. Cas. 60. * * * *'"

We are of the opinion that the language of the court in Madden vs. Smith, 28 Kan. 570, is appropriate here:

> "Whether the plaintiff recovered much or little, and whether he claimed all or less than all he was entitled to, is entirely immaterial. One contract gives one cause of action, and the plaintiff maintaining one is estopped from any future or further action. This rule of law is familiar, rests upon the soundest principles, and we think is controlling in the present case. In 2 Smith's Leading cases, page 671, the author says:
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> > 'As an entire cause of action cannot be divided, a judgment in favor of or against the plaintiff for part will be as conclusive

against the right to maintain an action for the residue as if it had embraced the whole.' "

We further quote the case of Baldwin vs. Travelling Men's Assn., 283 U. S. 522, 525-526:

"Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause."

The foregoing principle of law is as applicable to contract actions and to contracts of employment as to damage actions. 34 C. J. 829, 831, 832, 833. The basis thereof is well set forth in the case of Empire Oil & Refining Co. vs. Chapman, 183 Okl. 639, 79 P. 2nd 608, 610, as follows:

"In general, an entire claim cannot be divided and made the subject of several suits, but plaintiff must include in one action all the various items or elements of damages which he has suffered. See Akin vs. Bonfils, 67 Okl. 123, 169 P. 899; Brisley v. Mahaffey, 87 Okl. 257, 209 P. 920. Thus it was held that, where the plaintiff had two horses killed at the same time by the train of a railroad company, and sued the company before a justice of the peace for the killing of one of the horses, and recovered judgment for $100, being the extent of the justice's jurisdiction, he could not afterwards maintain an action for the killing of the other horse. Brannenburg vs. Indianapolis P. & C. R. Co., 13 Ind. 103, 74 Am. Dec. 250. Many illustrations may be found in cases listed under Judgments, Key 591 et seq. Decennial Digest; and see, also, 34 C. J. 833, 834."

Since the record reveals that the claim violates the foregoing rule of law, and since we are convinced that the rule is applicable herein, and is a good rule, the decision of the Board is that the claims should be denied, and accordingly it is so ordered.

The record reveals that this is an attempt on the part of the employes, or their representatives, to reopen the case settled by Award 63, and is a clear violation of a well established rule as to the splitting of causes of action.

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 petitioners are not entitled to an award for the reason that all controversies should have been settled by Award No. 63.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1940.