Award No. 2667
Docket No. CL-2637

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

CHICAGO UNION STATION COMPANY

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

(a) The management is violating the Clerks' Agreement by requiring H. F. Ames, a Red Cap to pay 83¢ (through deduction from check), for an issued uniform cap, also—

(b) Claim for losses sustained by all employes involved in or affected by this and/or other similar agreement violations (where deductions have been made for uniform caps or uniforms), subsequent to November 1, 1940, the effective date of existing agreement.

EMPLOYES' STATEMENT OF FACTS: On November 1, 1940 an Agreement between the Chicago Union Station Company and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes became effective.

The following Rule 54 is a part of said Agreement:

> "RULE 54—EQUIPMENT FURNISHED. On positions where the management requires the use of machines, equipment, supplies or other articles for use on such positions, they will be furnished by the Company."

Prior to November 1, 1940 the employes were governed by rules which were carried over from a Company Union Agreement. There was no rule similar to Rule 54 contained in old agreement.

On or about March 1, 1941 through the Office of the Station Master a document titled "Rules of the Usher and Red Cap Force," signed by the Station Master (H. E. Rogers) was issued, posted and distributed to all of the above forces. There are some 92 rules, regulations and instructions as referred to by management contained in said document **which we have not agreed to.** We show copy of document as Employes' Exhibit A.

During the latter part of May 1941, H. F. Ames, a Red Cap notified E. J. Galvin, Chief Usher that he was in need of a uniform red cap. Accordingly the cap was furnished. On Friday June 6, 1941 employe Ames received his regular semi-monthly pay check and at that time discovered his pay check was short in the amount of 83¢. Upon inquiry to the management about this shortage Ames was informed a deduction of 83¢ had been made for payment due Company in furnishing him with uniform cap.

Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

It is respectfully submitted (1) that your Honorable Board has no jurisdiction over this dispute, for the reasons set forth above at pages 7 and 8, and (2) that in any event the Carrier's action in this matter does not constitute a violation of the applicable Agreement, and consequently, that the Claimant is not entitled to the reimbursement claimed.

OPINION OF BOARD: The claim here asserted by the organization is that the management violated the effective Agreement of November 1, 1940, by requiring one Ames, a Red Cap, to pay 83¢, through a deduction from his wages, for an issued uniform cap, and that "all employes involved in or affected by this and/or other similar violations" be reimbursed for losses sustained by reason of deductions for uniforms or uniform caps.

It is first asserted that this Board is without jurisdiction because (a) the claimant, Ames, died after the demand was pursued on the property but before the filing of the petitioner's ex parte submission, and (b) the claim asserted on behalf of other employes was not handled on the property in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes, as required by the Railway Labor Act.

In support of the first proposition the management cites Award 246 of the Fourth Division. That was a case where a claim was asserted exclusively in the name of a deceased employe for wages alleged to be due for overtime. The claimant's organization was not a party to the proceedings, nor was there any contention that the rights of other employes were either directly or indirectly involved. The Board observed in its opinion that, "The individual having died while the action was pending **and there being no one within the contemplation of the Act before the Board,** the claim must be dismissed." (Our emphasis.) Here, however, the proceeding was instituted and is being prosecuted by the System Committee of the Brotherhood—not in the name or solely on behalf of the deceased employe. The petitioner is seeking an interpretation of the Agreement—not merely the recovery of 83¢ for the estate of the decedent.

The carrier urges that the statement of the claim is so indefinite as to the dates of the occurrences complained of, the identity of the employes involved, and the descriptions of the articles for which they were charged that it must be concluded that there could have been no good faith effort to settle this controversy on the property. It is enough to say, without burdening this opinion, that the record affirmatively discloses that the carrier was fully advised of the nature of the claim and the rule upon which it was predicated; and that its general manager rejected the demand before the petitioner's ex parte submission was filed. This, we think, was sufficient to meet the jurisdictional requirements of the Railway Labor Act. We do not understand that it is necessary for a petitioner to name each and every employe whose rights may ultimately be affected by the award that may be entered. It is one of the virtues of the act creating this Board that it provides for representative proceedings.

There is a distinction between a cause of action and an action. A cause of action pertains to a right; the action is merely the remedy by which the right is enforced. At common law an action abates upon the death of the plaintiff but the cause of action survives, if it was assignable. Here the cause of action was upon the theory that wages were due Ames and was assignable.

The cause of action therefore survived Ames' death. The action is for an interpretation of the Agreement under which the wages accrued, for which purpose the petitioner is a proper plaintiff. We are of the opinion that the action did not abate by reason of the death of Ames. Awards 1521 and 2422 present examples of such survivorship.

Coming to the merits of the case, we find that for some sixteen years prior to the execution of the effective Agreement it was the prevailing practice of the employes, without any express contractual obligation on their part to that effect, to bear one-half of the cost of their caps and uniforms. There is a sharp conflict in the evidence, which we are unable to reconcile, as to what understanding, if any, the contracting parties had during their negotiations as to the continuance or abandonment of this practice. It cannot be said that there was any subsequent acquiescence in these deductions, since the operating rules provided for the semi-annual change of uniforms and Ames protested the deductions within seven months after the Agreement was executed. On this state of the record we can only look to the terms of the Agreement, to ascertain the intent of the parties.

Rule 54 reads:

> "On positions where the management requires the use of machines, equipment, supplies or other articles for use on such positions, they will be furnished by the Company."

Red Caps are specifically included in the scope of the Agreement and they are required to wear prescribed caps and uniforms while on duty, but these may not be taken off the premises. All that remains for us to determine, therefore, is whether such caps and uniforms come reasonably within the category of "equipment," as that term is used in the Agreement. The dictionary definition of the word readily admits of such an application. For example, a soldier's uniform is popularly regarded as a part of his equipment. We do not regard it as a strained construction of the Agreement to hold, therefore, that the prescribed caps and uniforms which the Red Caps are required to wear exclusively while on duty are "equipment," within the meaning of Rule 54. It is so declared.

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 to the extent indicated in the opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.

DISSENT TO AWARD NO. 2667, DOCKET CL-2637

It is apparent that this Award rests upon decision to give dictionary meaning of the word "equipment," with such meaning extended by the decision to the limit at least of inclusion of a uniform cap. Such decision is reached despite that every element of correct determination of the meaning of an Agreement which appeared in this case is controverted thereby, as will appear from this listing of such elements:

First, the practice for 16 years for the Carrier not to bear that which is here claimed, i. e., the one-half of the cost of uniform caps borne during those preceding years by the employes.

Second, with such knowledge before them the parties agreed to inclusion of the word "equipment" in the rule involved without reference to wearing apparel of any character,—uniform caps or other.

Third, that the Petitioner, one of the contracting parties, had the obligation upon negotiation of their Agreement of proposing specific reference to uniform caps if it desired to be relieved of the long established and existing practice of bearing one-half the cost of such caps and if it intended them to be considered as part of the "equipment" referred to in the rule.

Fourth, if unable to agree with the other party, the Carrier, thereupon, it was the Petitioner's obligation to make reservation before signing the Agreement.

Further, the justification for the decision through the example that a soldier's uniform is popularly regarded as a part of his equipment is as vulnerable as the unwarranted extension of the rule itself; military policy in respect to supply of equipment without cost to soldiers, whose compensation is not a matter of free bargaining, provides inadequate support for this decision even though the contract phases could be ignored and the case decided upon equity. A comparison with policy as regards supply of wearing apparel followed in respect to other railroad crafts, or crafts of other industries, would furnish a more practical base if equity, aside from the contract, was to govern.

An Award with such defect does not properly interpret the Agreement.

(s) C. C. Cook
(s) R. H. Allison
(s) A. H. Jones
(s) C. P. Dugan
(s) R. F. Ray