

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD

(Henry A. Gardner, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad that:

The wife of Telegrapher F. L. Lakin is entitled to annual transportation over the lines of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Telegrapher Lakin entered the services of the Carrier January 25, 1917. Left the service September 25, 1924, a period of time covering seven years, eight months. He entered the service of the Carrier February 21, 1943, and as of the date of the claim, December 12, 1946, a period of time had been covered of three years, nine months, twenty-one days, making a total service by the Claimant of eleven years, five months and twenty-one days.

There is an Agreement between the parties effective June 16, 1944.

POSITION OF EMPLOYEES: Rule No. 30 of the effective Agreement which we now quote:

"Annual Transportation

"Employees who have been in the service of the Railroad for three (3) years or more and who have not to exceed thirty (30) demerits will be given annual transportation, and for their wives when in the service of the Company ten (10) or more years."

is applicable to this claim and is the Rule under which the claim has been filed and is being prosecuted.

Exhibits A to E, inclusive, are attached hereto and made a part of this presentation.

These exhibits define accurately the respective position of both Carrier and Organization. The Carrier in denying the request writes an additional word "continuous" in the Rule.

The Organization insists that inasmuch as the word "continuous" does not appear in the rule as agreed to, it cannot now be inserted by unilateral action of the Carrier.

This Board has held in numerous awards that it is without authority to change the text of an agreement.

confer rights and privileges upon employees upon the basis of their relative seniority. The claim and the contention of the Employees in this case is wholly inconsistent with and does violence to such intention.

To sustain the claim of the Employees would confer upon Telegrapher Lakin greater pass privileges than are conferred by the rules upon the many other employees holding greater seniority than Mr. Lakin.

When an employe is discharged from the service of the company, as was Telegrapher Lakin, all his rights and privileges as an employe were terminated. His seniority as an employe unquestionably was terminated and can not be reinstated. Similarly, his pass privileges under Rule No. 30 also terminated and are not reinstated under the rule any more than his seniority. To hold otherwise is to do violence to the clear intent of the rules and their application throughout the years with all classes of employees.

The pass rules of the company, applying to all classes of employees, provide that where pass privileges are based upon length of service, such service must be continuous. None of the rules of agreement dealing with seniority recognize any prior broken service. The term "service" as used in Rule No. 30 can not by any reasoning or logic be given a more favorable interpretation than the seniority rules.

Rule No. 30 was first adopted in agreement between the Carrier and its Telegraphers effective January 1, 1916, and has been continued, without interruption, through succeeding agreements up to and including the present agreement of June 16, 1944. The term "service" as used in the agreement of January 1, 1916, and all succeeding agreements has always, without question or protest, been construed and applied as meaning continuous service. The Employees now for the first time in more than thirty-one years are attempting to have a different interpretation placed upon the rule than the accepted and approved interpretation followed during the past thirty-one years. On the basis of rules and accepted past practice, the claim of the Employees is inconsistent and absurd. It is without merit and should be denied.

Finally, the Carrier wishes to state that if, by some reasoning or logic not now apparent to the Carrier, it be found that the provisions of Rule No. 30 support the claim of the Employees, and that Telegrapher Lakin must be given credit for his prior service, then the balance of the rule also must be observed. In accordance with the provisions of Rule No. 30, the granting of annual transportation is contingent upon the employe "not having to exceed thirty (30) demerits." Mr. Lakin was discharged from the service, which discipline is considered as exceeding thirty demerit marks. As is indicated by the rule, an employe may have more than thirty demerits against his record and still be retained in service. When an employe is discharged from service, this is the maximum penalty under discipline rules and, of course, is the equivalent of more than thirty demerit marks.

Therefore, under Rule No. 30, no matter how it be interpreted or applied, Telegrapher Lakin is still not entitled to the annual pass claimed. Mr. Lakin now has an annual pass in favor of himself under the three year provision of the rule, but if the rule is to be interpreted as maintained by the Employees, and all of the provisions of the rule be made effective, Mr. Lakin would not be entitled to the annual pass in favor of himself which he now holds, since the granting of an annual pass to a telegrapher after three years' service is contingent upon his not having to exceed thirty demerits against his record.

OPINION OF BOARD: This claim involves the question of whether or not the wife of Telegrapher F. L. Lakin is entitled to annual transportation on the lines of the Carrier.

Rule 30 of the parties' effective agreement is as follows:

"Employees who have been in the service of the Railroad for three (3) years or more and who have not to exceed thirty (30)

demerits will be given annual transportation, and for their wives when in the service of the Company ten (10) or more years."

The facts are that Telegrapher Lakin has presently been in the service of the Carrier since February 21, 1943. However, Lakin had previously been employed by the Carrier from January 25, 1917 to September 25, 1924.

It is the thought of the General Committee that the service of Lakin, for the purpose of Rule 30, should be accumulated, thereby giving him more than ten years. It is Carrier's position that the service contemplated by Rule 30 relates to service performed after he re-entered the services on February 21, 1943.

We think that the position of the Carrier is correct. When Lakin ceased his previous employment on September 25, 1924, all his rights with the Carrier based thereon and accruing thereby were lost, including the right to passes. No such rights existed during the interim. He cannot now revive those rights by his present re-employment unless the agreement expressly so provides. We find no such provision therein. We are of the opinion that the word "service" in Rule 30 of the agreement, as it relates to the right of Lakin to obtain annual transportation for his wife, relates to and coincides with the date of his present service. The claim should therefore be denied.

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 there has been no violation of the agreement by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1947.