

Award No. 5845

Docket No. CLX-5803

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The Agreement governing hours of service and working conditions between the Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at Portland, Oregon through the failure and refusal of Railway Express Agency, Inc. to request free transportation for employee C. P. Langdon, and family, Portland, Oregon to Vancouver, B. C. and return via Great Northern Railway; and

(b) He shall be reimbursed in the amount of \$36.05, representing the difference between the half rate order which he was furnished and used and the full fare which he paid.

EMPLOYEES' STATEMENT OF FACTS: C. P. Langdon entered service of Railway Express Agency, Inc. on October 7, 1941 at Portland, Oregon. He later transferred to the Oregon Messenger Seniority District and holds seniority therein from November 11, 1942. He is now Helper in joint service (handling express, mail and baggage) on Southern Pacific (Pacific Lines) Trains 329 and 330, Portland-Medford, Oregon Route.

In March, 1947, Helper Langdon requested free transportation for himself, wife and two daughters (ages 10 and 11) from Portland, Oregon to Vancouver, B. C. and return via Great Northern Railway. Management did not request free transportation but instead requested one-half rate orders.

April 8, 1947, General Chairman T. E. Hinton wrote General Manager I. E. Manion of the Great Northern Railway Company in reference to policy of the Great Northern Railway as to the issuance of free transportation to employees of the Railway Express Agency, Inc. (Exhibit "A").

April 8, 1947, General Chairman Hinton wrote Superintendent C. I. Fitzgerald of the Railway Express Agency, Inc. regarding the same matter and furnished him with a copy of his letter to General Manager Manion (Exhibit "B").

April 10, 1947, General Chairman Hinton wrote General Manager Manion supplementing letter of April 8, 1947 (Exhibit "C").

Railway Express Agency asserts there is no contractual obligation on the part of the Agency other than to request transportation privileges from the Railroad, and that there is no obligation whatever on the part of the Railroad to grant transportation privileges except as it may feel disposed to do so in accordance with its rules. It follows, therefore, that there is no contractual obligation on the part of the Railway Express Agency in the circumstances here present to make refund of \$36.05 for which claim is brought in behalf of Helper Langdon. As held by Referee Carter in Award 4193, "It is not the function of this Board to interfere with the administration of privileges which are based solely on the generosity of the carrier." Under all of the facts and circumstances set forth above, the claim in the instant case should be denied.

All evidence and data set forth have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 1, 1947, C. P. Langdon, a helper working exclusively on the Southern Pacific Lines, on whose behalf the claim is made requested a trip pass for himself, his wife and children via Great Northern Railway to Vancouver, B. C. The carrier did not ask for the trip pass but asked for a half-rate order which was issued and sent to Langdon. With it and \$36.05 he purchased tickets for the trip. He claims that this failure to request a trip pass was a violation of Rule 90 of the controlling Agreement.

The Rule is, as follows:

"The management officers will in good faith request (except where the requests will not be honored) the various railroads to furnish free transportation to the employees on the same terms as is granted other employees in railroad service. This will include members of any committee representing employees."

There was no obligation on the part of the Great Northern Railway to issue a pass for Langdon and his family under the conditions outlined. In addition the Western Association of Railway Executives had adopted a Rule on the subject which in pertinent part, is as follows:

"... that trip passes will not be furnished employees of the Express Agency not actually engaged in service on the line over which the pass is requested; half-rate orders will however be issued. . . ."

Langdon was not engaged in service on the Great Northern Railway, therefore, the literal effect of this Rule was to deny him anything more than a half-rate order, which was received.

On this basis the carrier urges substantially that a request for a pass would have been a futility as it knew from the beginning, hence under the exception of Rule 90, as follows:

"except where the requests will not be honored"

it was under no obligation to make a request.

This reasoning appears sound. The carrier could not be required to make the request in view of its knowledge that compliance therewith would be in violation of this established Rule of the Western Association of Railway Executives.

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

The claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952.