

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(PacificLines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6170) that:

(a) The Southern Pacific Company violated the Rules of the Clerks' Agreement when it failed and refused to grant a trip pass for the use of a minor dependent son to accompany his mother, employee Mrs. B. L. Aikins; and,

(b) The Southern Pacific Company shall now grant the requested free transportation, Eugene, Oregon to Sunnyvale, California, and return.

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

Regularly assigned employee Bernice L. Aikins, (hereinafter referred to as Claimant) made application on June 4, 1962, for a trip pass in favor of herself and her son Richard, age 13, from Eugene, Oregon, to Sunnyvale, California, and return. Under "Remarks" and above her signature on Form S-2313 "Request for Transportation," the following endorsement appears:

**"MY SON IS MY DEPENDENT AND IS NOT RECEIVING
SUPPORT FROM HIS FATHER. HE IS WHOLLY DEPENDENT
UPON ME."**

At the time of making application for free transportation, Claimant had been employed by Carrier for nearly 10 years. Date-entered-service blank on the form indicated the precise date to be "6/26/52."

OPINION OF BOARD: On June 26, 1952, Mrs. Bernice L. Cutler entered Carrier's service. Her employment application showed that she was divorced and was the mother of Judith Cutler, age 5, and Richard Cutler, age 3½. On May 21, 1956, she informed Carrier that she had remarried and changed her name to Bernice L. Aikins. She is the Claimant herein.

On June 4, 1962, Claimant applied for a trip pass over Carrier's lines for herself and son, Richard, age 13, from Eugene, Oregon, to Sunnyvale, California and return. On the application, in the space provided for "Remarks" she wrote:

"MY SON IS MY DEPENDENT AND IS NOT RECEIVING SUPPORT FROM HIS FATHER. HE IS WHOLLY DEPENDENT UPON ME."

Carrier denied the request for a pass for Richard. The issue raised on the property in Carrier's written reasons for disallowance, was whether Richard was Claimant's dependent.

The pertinent provision of the Schedule Agreement reads:

"TRANSPORTATION - PASSENGER

Rule 58.

(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 record made on the property — which is all that we may weigh — supports the finding that if Richard was in fact Claimant's dependent he would have contractually qualified for the requested transportation pass by application of Rule 58 (a).

The statement of Claimant on the request for Richard that "HE IS WHOLLY DEPENDENT UPON ME;" and a written statement by the stepfather:

"March 17, 1965

"TO WHOM IT MAY CONCERN:

I have not legally adopted the children of my wife, Bernice, and do not contribute directly to their support. The children are dependent on the income of their mother.

/s/ Keith L. Aikins"

make a **prima facie** case that Richard was Claimant's dependent. The burden of going forward with the evidence to rebut the **prima facie** case was vested in Carrier.

Carrier's defenses are: (1) the following excerpted from the findings and order of the court in the divorce proceedings to which Claimant and Richard's natural father were parties.

"IV.

That there have been two minor children born to these parties, whose names are Judith Christine, age 4 years and Richard Keith, age 3 years. That plaintiff is a proper and suitable person to be

awarded the care and custody of said children and that defendant shall have the right of visitation with said children at proper and reasonable times.

* * * * *

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT That the defendant be and he is hereby ordered to pay the sum of \$67.50 per month, toward the support and maintenance of the minor children of the parties hereto."

and; (2) that it did not interpret the written statement of Richard's stepfather as evidence that he was not furnishing "direct support to the children of Claimant."

Claimant asserts that notwithstanding the court order Richard's natural father failed to contribute to the support of the issue born of his marriage with Claimant. Carrier failed to adduce factual evidence to the contrary. We, therefore, find that Richard's natural father was not contributing to his support.

The statement of Richard's stepfather that "The children (which includes Richard) are dependent on the income of their mother (Claimant)" is unambiguous and unequivocal. It stands, in the record, uncontroverted by material and relevant evidence of probative value.

We find, from the foregoing analysis of the record made on the property, that: (1) Richard was *de facto* Claimant's dependent when Claimant made the transportation request; and (2) Carrier's refusal to honor the transportation request violated Rule 58 (a) of the Agreement.

In its Submission Carrier argues that the Claim is moot because at the time of the writing of the Submission to this Board, Richard was over 18 years of age and gainfully employed; and, as of now he is not a dependent within the meaning of that term in Rule 58 (a). We decide the case *nunc pro tunc* the time of the violation. We will sustain the Claim.

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 11th day of July 1968.

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