NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24509
THIRD DIVISION Docket Number CL-24598

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9615) that:

(1) Carrier violated the terms of the current Agreement, particularly Rule 43(b), when it failed to provide free transportation for Mr. D. C. Warn and his family and household goods, as requested May 14, 1981, and

(2) Carrier shall be required to reimburse Mr. Warn for expenses incurred by him in moving his family and household goods, in the amount of $185.60.

OPINION OF BOARD: The central issue in the instant case centers on the Organization's contention that Rule 43(b) of the current Agreement, effective May 15, 1972, should be interpreted in a manner whereby the phrase: "free transportation" be construed to mean "expenses" incurred when an employe voluntarily exercises seniority rights to a new position or vacancy which necessitates a change in residence. The facts of the case stem from the request by Claimant on May 14, 1981 for authorization to incur expenses for moving his household goods and dependents in accordance with the Rule provision in dispute. This request was denied by the Carrier. After appeals on the property, up to and including the highest designated Carrier officer, were denied, this case is now before the National Railroad Adjustment Board.

Prior to and including part of the year of 1971, when the Carrier engaged in the business of passenger service, a predecessor provision to current Agreement Rule 43 (b), under the title of Rule 42 (B) in the then current Agreement, effective May 1, 1952, read as follows:

> "Employees voluntarily exercising seniority rights to new positions or vacancies which necessitates a change in residence will receive free transportation for themselves, dependent members of their family and household goods, when not in conflict with state or federal laws, but free transportation of household effects under these circumstances need not be allowed more than once in a twelve month period and limited to the railway company's lines."

Approximately one (1) year after the Carrier discontinued passenger service the parties signed a new Agreement, effective May 15, 1972 as noted above, and the new Rule 43 (b) replaced the old Rule 42 (B). This new Rule 43 (b) reads as follows:

"Employees voluntarily exercising seniority rights to new positions or vacancies which necessitates a change in residence will receive free transportation for themselves, dependent members of their family and household goods, when not in conflict with state or federal laws, but free transportation of household effects under these circumstances need not be allowed more than once in a twelve month period."

Subsections (a) and (b) of Rule 43 of the new Agreement also replaced subsections (A) and (C) of Rule 42 of the prior Agreement. This is immaterial to the case at bar, however, since there was no change in language and these subsections need not be quoted here.

The only difference in language between Rule 42(B) of the Agreement of 1952, therefore, and Rule 43 (b) of the Agreement of 1972 is the elimination of the phrase: "... and limited to the railway company's lines". The basic argument of the Organization is that the removal of this phrase leads one to conclude that the phrase "free transportation" now means "expenses" incurred.

A review of the facts and background of the instant case points to an undeniable problem from the point of view of employe benefits: after the discontinuance of passenger service by the Carrier in 1971 an employe voluntarily exercising seniority in order to assume a new position which implied a change of residence no longer had free (passenger service) transportation available to himself or his family because such service no longer factually existed. The Board is not convinced, however, that the new language found in the current Agreement represents a solution to this problem. Both past practice, from the record before the Board, and internal interpretative consistency as this relates to the current Agreement suggests that free transportation has never meant, on this property, that the Carrier pay expenses incurred for the category of employes under question when a residence change was necessitated. With respect to past practice, nothing has been introduced into the record by the moving party to serve as substantial evidence to suggest that the phrase "free transportation" has changed its operational meaning with the signing of the new contract in 1972.(*) With respect to internal interpretative consistency, the Board notes that the phrase "free transportation", as used at other points in the current Agreement, clearly does not appear to be synonymous with "expenses" incurred. Of particular note is current Agreement Rule 39 (c), which deals with Traveling Relief and Extra Employees. This Rule makes a clear distinction between "free transportation" and "reimbursement" of expenses. This Rule 39(c) reads:

(*) The Board is in accord with Organization position, in its rebuttal statement, that a number of prior claims filed on this property which deal with the same issue and which are discussed by the Carrier in its ex parte submission "should be disregarded by this Board". These claims should not be disregarded because, as the Organization states, they have "no bearing on the instant dispute", but rather because reference to these claims is not properly before the Board since such reference was not made when the instant case was handled on property (Third Division 22405 et alia).

"An employee in such service shall be furnished with free transportation by the railroad company in traveling from his headquarters point to another point and return, or from one point to another. If such transportation is not furnished, he will be reimbursed for the cost of rail fare if he travels on other rail lines, or the cost of other public transportation used in making the trip; or if he has an automobile which he is willing to use and the carrier authorizes him to use said automobile, he will be paid an allowance at the prevailing rate for each mile in traveling from his headquarters point to the work point, and return, or from one work point to another.

Organization claim ultimately states that such a distinction as is found in Rule 39(b) also presently exists in Rule 43(b) of the current Agreement as this applies not only to employes and their families who voluntarily exercise seniority rights which imply a change of residence, but also to household goods which must be moved because of such. The language found in Rule 43(b), even with the elimination of the phrase "... and limited to the railway company's lines", does not support such a contention. Should the moving party in the instant case wish Rule 43 (b) to read, in its application to employes who voluntarily exercise seniority rights and to their families and to their household goods like Rule 39 (c), it should seek such changes at the bargaining table rather than before the National Railroad Adjustment Board whose function, as mandated by the Act, is limited to the interpretation of Agreements.

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 Employe 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1983.