

SPECIAL BOARD OF ADJUSTMENT NO. 285

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

READING COMPANY

Award No. 39
Case No. 39

STATEMENT "The Claim of the System Committee that:
OF CLAIM:

1. The Carrier violated the effective agreement on and continuing since January 3, 1961, because it has refused to furnish Plumber Harry A. Widmann a pass good between his home station and Philadelphia for free travel between his home and work.

2. The claimant Plumber Harry A. Widmann be now furnished with an annual pass, good between Yardley, Pa. and Philadelphia, for his use in traveling between his home and place of work and that he be reimbursed for all fares and other expensed incurred since January 3, 1961 traveling to and from his work headquarters in Philadelphia up to the time this claim is adjusted."

OPINION OF BOARD:

For a substantial number of years prior to 1960 the Carrier provided annual passes to all Maintenance of Way Department employees with 60 days or more of service. These passes were for the employees' use in daily travel between home station and headquarters, which meant that the employees had free commutation for travel between home and place of work.

Late in 1959 the Carrier issued instructions that effective January 1, 1960 new employees would not be granted free transportation for commutation purposes, and that annual passes issued to such employees for use in performance of their duties would be stamped: "NOT VALID FOR REGULAR OR DAILY TRAVEL BETWEEN RESIDENCE AND PLACE OF BUSINESS." The modified regulations also provided: "New employees may be issued a reduced rate order for purchase of a commutation ticket which will be sold between home station and place of business at one-half the unlimited ride monthly commutation fare." This modification of the Carrier's previous pass regulations was applied to all employees hired on or after January 1, 1960, regardless of whether they subsequently acquired 60 days of service, but did not affect employees hired before January 1, 1960.

Harry A. Widmann, the present claimant, was hired as a plumber on November 2, 1960, and was given transportation privileges consistent with the Carrier's modified pass regulations described above. The claimant lives in Yardley, Pa., and his work headquarters are in Philadelphia. The contention

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in this claim is that the Carrier violated the labor agreement by failing to issue Widmann an annual pass for his daily use between Yardley and Philadelphia, after 60 days of service. The agreement provision dealing with free transportation is Rule 44 reading:

"Employees covered by these rules and those dependent upon them for support will be granted free transportation consistent with the pass regulations of the Reading Company."

In pressing this claim the Organization also relies upon a letter dated May 19, 1952 from T. E. MacMannis, the Carrier's Engineer Maintenance of Way, in response to a written complaint from Carl Bello, General Chairman of the Organization. In a letter dated February 27, 1952 the General Chairman had complained to the Engineer Maintenance of Way that it had been the policy of the Pass Bureau during the previous four years to furnish one man a pass for a group of men who ride the same train from home station to place of work. General Chairman Bello said this arrangement was not working out because "the man who has the pass oft times does not report for work and the other men are compelled to pay their fare." The General Chairman requested that "all section laborers be furnished an individual pass between their home station and headquarters, so that we will not have these men being compelled to pay their fare and not be subject to abuse from train screws." The Engineer Maintenance of Way's reply letter of May 19, 1952 stated in pertinent part:

"Management has approved issuance of card passes to all trackmen who have been in service 60 days or more, good between home station and headquarters, in territories where passenger service is available. Division Engineers are being so advised. They will arrange for such transportation as soon as practical."

It is the Organization's position that the above-quoted letter by the Engineer Maintenance of Way constitutes a binding agreement which is enforceable as part of Rule 44 of the labor agreement, which the Carrier therefore may not change unilaterally by means of such instructions as were issued effective January 1, 1960. The Carrier denies that this letter constitutes a binding agreement. Management further contends that free transportation is a gratuity which has not been negotiated and which may be modified or withdrawn at any time.

It is evident that Rule 44 does not set forth the Carrier's pass regulations. All that this rule provides is that employees covered by the contract, and their dependents, will be granted free transportation consistent with the pass regulations of the Carrier. So far as the express language of Rule 44 is concerned, Management is not barred from changing its pass regulations.

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The letter of May 19, 1952 by the Carrier's Engineer Maintenance of Way in response to General Chairman Bello's complaint did not constitute a binding agreement between the parties that the pass regulations could not be changed thereafter except by the concurrence of both parties. All that this Carrier representative consented to do was to give a pass to each track employee, instead of granting a pass to one individual for a group of employees. This is the only action the Carrier was requested to take at that time. The Engineer Maintenance of Way took this action within the framework of the pass regulations then in effect. He was not requested to agree to maintain the Carrier's pass regulations unchanged thereafter, and no such agreement was made.

The fact that the pass regulations were continued without change when the contract was last revised in 1956 does not mean that the Carrier thereby became prevented from modifying these regulations during the term of this agreement. All that happened was that the Carrier continued to provide free transportation as a gratuity after the effective date of the revised contract, as it had done before.

Under these circumstances it must be held that the Carrier did not violate the labor agreement by revising its pass regulations effective January 1, 1960 in the manner previously described. It also must be held that it was not a contract violation to confine the pass privileges of Claimant Widmann to these modified regulations.

While not a controlling factor in this case, it should be noted that the modification of its pass regulations which the Carrier put into effect as of January 1, 1960 was not an arbitrary or capricious act. This modification was undertaken to avoid the possibility of jeopardizing certain subsidy benefits which the Carrier (and, indirectly, its employees) has been receiving from a public authority for the purpose of preserving commuting passenger service.

AWARD: Claim denied.

(s) Lloyd H. Bailer
Lloyd H. Bailer, Chairman

(s) A. J. Cunningham
Employee Member

(s) H. F. Wyatt, Jr.,
Carrier Member

Philadelphia, Pa.

March 18, 1964.