

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

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

SOUTHEASTERN EXPRESS COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that F. J. Kennedy, Baggage and Money Clerk, Charlotte, N. C. shall be paid one (1) hour overtime for each day worked since April 5, 1937 account assigned starting time of his position being established as 1:00 A. M. in violation of agreement rules."

EMPLOYEES' STATEMENT OF FACTS: "(1) Prior to April 5, 1937, F. J. Kennedy was regularly occupying position of Baggage and Money Clerk, Charlotte, N. C. with assigned hours of 11:00 P. M. to 7:00 A. M. with 20 minutes for lunch.

"(2) Effective April 5, 1937, General Agent J. M. Small issued instructions changing the assigned starting time and hours of service of Mr. Kennedy as 1:00 A. M. to 10:00 A. M. with one hour for lunch.

"(3) The Charlotte Agency of this Carrier is operated continuously 24 hours each day, there being one or more employees on duty each hour of each day.

"(4) One of the principal items of business handled by this Carrier is the transporting of money and valuables. The duty of handling and the responsibility for safeguarding money and valuables must be and is assigned to some position and employee incumbent thereof. The responsibility of safeguarding such money and valuables exists each and every hour of the day. To insure the proper and continuous handling and safeguarding of such business, positions and employees are so assigned as to have a transfer or turn-over of money and valuables from one shift to another.

"Evidence in support of this statement is offered in the form of Employees' Exhibits 2, 3 and 4 attached hereto and made a part hereof, same being:

Exhibit 2, copy of Carrier's Bulletin No. 20 dated Nov. 1, 1934 outlining duties of 7:00 A. M. to 3:00 P. M. position No. 8.

Exhibit 3, copy of Carrier's Bulletin No. 24 dated Dec. 22, 1934, outlining duties of 3:00 P. M. to 11:00 P. M. position No. 54.

Exhibit 4, copy of Carrier's Bulletin No. 15 dated May 11, 1937, outlining duties of 1:00 A. M. to 10:00 A. M. position No. 11.

Exhibit 5, copy of Carrier's Bulletin No. 5 dated June 22, 1932 outlining duties of 11:00 P. M. to 7:00 A. M. position.

starting times are arranged to conform with the provisions of Rule 51 of the existing agreement, and carrier has the Transfer Clerk working the shift from 8:00 A. M. to 4:00 P. M. perform such of the Baggage-Money Clerk work as might incidentally arise after 10:00 A. M. (when the Baggage-Money Clerk goes off duty). As hereinbefore pointed out, because of train schedules of Southern Railway trains at Charlotte, N. C. and other conditions, there is a very small quantity of this work between these hours, which can be done by the Transfer Clerk in spare moments from his regular duties.

"Carrier urges that in assigning some incidental duties of the Baggage-Money work to the Transfer Clerk does not thereby make it possible that the set-up could be construed as constituting two three-shift arrangements. Clear support of the carrier's position here is to be found in the decision of this Honorable Board in its Award Number 193, the 'CONCLUSIONS OF THE BOARD' in which award are quoted below for ready reference:

"The rule in question was not intended to interfere with the carrier's right to assign men to hours of duty which would best meet the needs of the service. It was intended to protect employees against being called to work at unreasonably early hours in a single situation. In other situations, the rule leaves the management free to assign hours of duty most consistent with the requirements of the service.

"The single situation in which the rule protects the employe is that described in the rule, " 'Where three consecutive shifts are worked covering the twenty-four (24) hours period.' "

"In determining when the situation contemplated by the rule exists, the Referee is of the opinion that the test to be applied is whether there is a substantial amount of work covered by the Clerks' Agreement being performed in the interval between shifts. Neither the fact that the office is open nor the fact that some employe on duty is incidentally performing some clerical duties during the interval creates the situation contemplated by Rule 36, (Carrier's Note: Rule 36 here referred to is identical in principle with our existing Rule 51.)

It was admitted that after the change of hours on November 16th, 1932 the office in question was open continuously for twenty-four hours and that some clerical work formerly performed by Mr. Greer was being performed between midnight and 1 A. M. The referee finds, however, that the clerical work being performed during the interval is slight in amount and merely incidental to other duties of the employees performing it.'

"Carrier again urges with emphasis that the Baggage-Money Clerk work performed between the hours of 10:00 A. M. and 4:00 P. M. by the Transfer Clerk on duty is merely incidental to his Transfer Clerk work and consumes a very small portion of his working hours, and that under the sound reasoning of this Board in its Award Number 193 this mere incident of some of the work being performed does not thereby constitute a three shift position arrangement, particularly is this more forceful than ever when consideration is given the fact that the incumbent is paid the higher salary for the Transfer Clerk work."

OPINION OF BOARD: Rule 51 of the agreement between the parties to this dispute, relied upon by the petitioner in support of its contention, although expressed differently, is not distinguishable in substance from Rule 36 which was under consideration in Docket CL 670 in which the Division has just rendered an award, No. 685. Accordingly much of what is said in that award is applicable here.

There is, however, a factual difference between the two disputes which requires the Division to inquire whether the interpretation adopted there may not have to be refined in this. In the previous award it was admitted that the claimant, who alleged that the carrier had assigned an improper starting time to his position, was doing precisely the same work which was being done by at least three other employees in the same office who were admittedly working in "three consecutive shifts" over a period of twenty-four hours. In this dispute, however, the carrier urges that the claimant is not performing the same class of work that the transfer clerks in the same office are performing, and that there is not, within the meaning of Rule 51, continuous service over a period of twenty-four hours in the class of work that the claimant is performing. In this dispute, therefore, it is necessary to inquire whether the interpretation adopted in the preceding award applies to all clerical workers in the same office or whether it applies only to those employees engaged in the same class of service. In addition, the Division must also determine whether there is continuous service in baggage-money work in which the claimant is engaged.

The Division is of the opinion that the second of the two views mentioned in the preceding paragraph should be adopted. Where a group of employees are performing the same class of work, it does not seem unreasonable to require the carrier to observe the limitations of the starting-time rule, even though there may be periods during a twenty-four hours when some overlapping of the work of one or more employees may be economical and desirable. In this situation, however, the assigned employees, performing the same class of service, should be able to care for periods of congestion when the work during the total period would not justify the addition of an employee to the shift. When there is work of a class different from that being performed by employees working in three consecutive shifts, and the work is not sufficient in volume to justify the assignment of men to cover the whole twenty-four hour period, it does not seem unreasonable to permit the carrier to assign one or two employees to such service at hours which best meet the requirements of the service. It is the opinion of the Division that a proper interpretation of Rule 51 permits this.

It is not denied that the work of handling baggage and valuables, including money, is different from that performed by a transfer clerk. It now remains to be determined whether there was such continuous service in the handling of baggage and money at the station involved to justify the application of Rule 51 to the employees in the service. This turns upon the question whether Mr. J. M. Wiley, designated as transfer-money clerk, was primarily a transfer clerk as claimed by the carrier, or primarily a baggage-money clerk as claimed by the petitioner.

Although the record is replete with statements and counter-statements concerning the issue, the most significant evidence of record is the affidavit of Mr. J. M. Small, General Agent of the carrier at the station involved in this dispute, in which he made certain reasonably definite statements concerning the character of the work of the employees directly and indirectly involved in this dispute.

Regardless of rates of pay and designations of positions, the Division, on the basis of the evidence of record, is of the opinion that, although there is some baggage and money work during Mr. Wiley's tour of duty, Mr. Wiley is primarily a transfer clerk, and is only incidentally engaged in handling baggage and valuables. The Division feels that it would be unfair to the carrier to compel it to maintain a baggage-money clerk during the hours involved for the performance of the relatively small amount of baggage-money service required, which, in the opinion of the Division, would be the practical result of an award denying it the right to arrange the hours of the two baggage-money clerks in the most effective manner to meet the requirements of the service at the station in question.

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 employe 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 record does not disclose a violation of Rule 51 of the agreement between the parties as claimed by the petitioner.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of July, 1938.