

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood for payment to Mail and Baggage Handlers L. L. Kemp, Wm. T. Borden and H. E. Alexander of wage losses suffered on December 13, 1937, account not being permitted to work in accordance with seniority rank and rights."

EMPLOYEES' STATEMENT OF FACTS: "On the date the claim is presented for the employees involved held seniority rights as Mail and Baggage Handlers, Mail and Baggage Department, Union Station, Kansas City, Missouri, their names appearing on the roster with the following seniority dates: Kemp, May 28, 1936; Borden, October 8, 1936; Alexander, May 21, 1936.

"They were assigned to report for work daily at 7:00 A. M. in accordance with their seniority as a part of a force of casual or short hour workers, whose period of work from 7:00 A. M. to 11:00 A. M. was established by memorandum agreement between the two parties.

"On December 13, 1937, Kemp, Borden and Alexander arrived at 7:05 A. M. at the usual place where assignments are made, their tardiness being due to icy condition of the highways. They were informed by the General Foreman that the casual force for the day had been called and assigned, and, that they would not be allowed to work account of the Company regulation that employees late are not permitted to work. Employees junior to them were worked.

"On the same date, Dec. 13, 1937, Mail Handlers Jos. L. Frick and Frank Geis, employees having regular assignments as Mail Handlers, 7:00 A. M. to 4:00 P. M., holding same by reason of their seniority rank, their seniority dates being June 28, 1918, and September 1, 1921, respectively, reported for work late at approximately 7:20 A. M. and 7:09 A. M., respectively. Frick and Geis were permitted to work and were paid for time worked.

"There is an agreement, bearing effective date of February 17, 1936, between the parties. The employees have cited certain seniority rules thereof, particularly Rules 1, 2, 4, 5, 6, 7, 8, 9, 10 and 14, and casual memorandum agreement of May 1, 1929, which rules are quoted in attached Exhibit A.

"The claim here presented has been handled with the carrier by correspondence and in conference. There is attached and marked Exhibit B the following correspondence: Letter of C. A. Schutty, General Chairman, dated December 18, 1937, addressed to John P. Jones, Mail & Baggage Agent; letter of John P. Jones, dated February 23, 1938, addressed to C. A. Schutty; letter of C. A. Schutty, dated March 2, 1938, addressed to B. J. Duffy,

(3) days after being notified (by mail or telegram sent to address last given) or give satisfactory reason for not doing so will be considered out of the service."

OPINION OF BOARD: The prevailing agreement between the parties to this dispute provides for a "regular" force and a "casual" force of Mail and Baggage Handlers at the Union Station, Kansas City, Missouri. Employees constituting the regular force work regular eight-hour per day assignments. Employees constituting the casual force report regularly each morning at 7:00 A. M. and as many as are needed are used. Those used are guaranteed four hours work. Seniority governs the right of employees constituting the casual force to the available work each day.

On December 13, 1937, three employees of the casual force were late (due to inclement weather) in reporting for duty and were not permitted to work because three other junior employees had been assigned and were working upon their arrival. The parties agree that had the three employees in question reported for work on time their seniority would have entitled them to work on the day in question.

On the same day two regularly assigned employees were also late (even later than the employees in question) in reporting for work, but their positions were held open and they were permitted to work their regular positions. Petitioner contends this constitutes an unfair and unreasonable discrimination as between the regular force and the casual force.

There is nothing in the rules that justifies or prohibits the practice followed in either case. Assuming the practice constitutes an unfair and unreasonable discrimination as contended by Petitioner, this Board is powerless to grant relief in this case. To do so would in effect write a new rule into the agreement. This does not mean that carrier is free to indulge in discriminating practices. It simply means that the method pursued to put an end to the alleged discrimination is an improper one. Assuming the practice complained of does constitute an unfair discrimination the remedy is to put an end to this practice and not to extend it.

The sanction of any practice that permits employees to be late for work of the character here involved is not the solution of the question presented.

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 employees involved in this dispute are respectively carrier and employees 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1939.