

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that the Carrier has violated and continues to violate the rules of the Clerks Agreement at Fort Worth Passenger Station.

- (1) When it assigns or requires certain Mail Handlers to work eight (8) hours or less in split tricks over a spread of more than nine (9) hours per day;
- (2) When it assigns or requires certain Mail Handlers to work and be paid regularly less than eight (8) hours per day;
- (3) When it requires certain Mail Handlers to report regularly each day for work and fails and refuses to permit such employees to begin work at and be paid from an established and fixed starting time;
- (4) When it fails and refuses to re-establish and maintain daily rates of pay on positions classified as Mail Handlers as stipulated and provided for in Wage Agreements, and further claim;
- (5) That employees affected by said violations shall be reimbursed for monetary losses suffered as a result of actions of Carrier retroactive to February 20, 1935."

EMPLOYEES' STATEMENT OF FACTS: "The Mail and Baggage Department of the Carrier at its Fort Worth Passenger Depot is operated continuously from approximately 5:30 A.M. to 12:00 Midnight, such hours of operation have varied at different times during the period of time over which this dispute extends but not to exceed thirty (30) minutes from either time mentioned.

"Prior to November 1, 1930, excepting as hereinafter stipulated, all Mail Handlers employed at this Station—

- (a) Were carried at a daily rate of pay as required in Rule 44;
- (b) Were each assigned to report for and begin work and be paid at a fixed starting time;
- (c) Were assigned, worked and paid eight (8) consecutive hours, exclusive of meal period, each day, and
- (d) Were paid at overtime rates for any time worked in excess of 8 hours per day.

"Mr. Chester then had Mr. Stamper in the office April 5th, at which time Mr. Stamper stated that he wanted to make a check to see if we could add more 8-hour men in line with previous talks in connection therewith. At this conference General Manager Chester said to Mr. Stamper that he wanted to have a clear understanding as to the purpose of the check, and Mr. Stamper answered that the purpose of the check was to add more 8-hour men if the check so developed.

"He was told that arrangements would be made. However, there was some delay account Mr. Stamper being out of the city. The check was made, however, by Mr. Stamper and Supervisor of Wages James on April 19, 1938, and following this check 5 additional regular 8-hour assignments were added, and unquestionably General Chairman Stamper will agree that the check as made by him and Supervisor of Wages James indicated that there was no need for any additional 8 consecutive hours assignments over and above the 5 that were added on May 20th as a result of this check.

"Since these 5 men were added on May 20th, Mr. Stamper has been advised that the Carrier stood ready and willing at any time that he felt additional 8 consecutive hour assignments could be added in line with Decision No. 23 of the Adjustment Board to make a further check with him and at any time the check showed that there is need for additional 8 consecutive hour assignments they will be added. To this Mr. Stamper will unquestionably agree."

There is in evidence an agreement between the parties bearing effective date of April 1, 1929, of which the hereinbefore quoted rules are a part.

OPINION OF BOARD: If (1) the claim in this case was the same as that submitted by the parties to the Line Board of Adjustment in 1933; and if (2) the decision of that Board, issued January 17, 1934, denied the claim on the merits; and if (3) this decision was lawfully arrived at, then the decision is binding on the parties and disposes of this case, for the agreement between the parties of April 7, 1927, setting up the Line Board, provided that its decisions "shall be final and binding on both parties."

We shall consider, in order, the three questions noted above.

(1) Was the claim in this case the same as that submitted to the Line Board? We conclude that it was.

The claim in this case alleges four violations by the carrier: the assignment of certain mail handlers to eight hours or less work in split tricks over a spread of more than nine hours per day; the assignment of certain mail handlers to less than eight hours' work per day; the failure to permit certain mail handlers, required to report regularly each day, to begin work at and be paid from an established and fixed starting time; and the failure to maintain daily rates of pay for certain mail handlers.

The Statement of Facts in the employees' submission to the Line Board was as follows:

"At Fort Worth, Texas, there are a good many Mail Handlers who are working less than 8 hours per day. There are other Mail Handlers who, though they are getting 8 hours per day work, work for short periods of time, are released and are required to report back at various other times during the day and night, some days working at 3 different periods within a spread of 15 and 16 hours in order to get 8 hours work. Over 200 Mail Handler hours per day are worked, yet there are only 6 regular assigned eight-hour positions."

The claim, as submitted to the Line Board, was that mail handlers:

"be assigned 8 consecutive hours per day exclusive of the meal period, and that they be paid at over-time rates for all time in excess of 8 hours and the meal period, from the time they first report for duty and are used, until they are released for the day, from July 11, 1933, until such a time as they are assigned 8 consecutive hours."

The Statement of Facts submitted to the Line Board contains all the elements of the claim now before us, except the alleged failure to pay employes held off work after reporting. But the claim, as presented to the Line Board, covered this alleged violation, as well as all the other violations, since it called for assigning mail handlers to eight consecutive hours per day, with pay from the time they first report for duty and are used until they are released. Moreover, the carrier's defense before the Line Board was based entirely on the fluctuating work provision of Rule 27, which, if it were applicable, would have permitted payment for only the actual time worked. The employes cited, before the Line Board, Rule 32, calling for a fixed starting time, and the several other rules cited to us in the present case. It seems fair to conclude that the claim as presented to the Line Board was the same as the claim now presented to us; and that it rested upon the same alleged violations of the same rules, and at the same place, and with respect to the same class of employes, as in the case before us.

(2) Was the claim denied on the merits? We conclude that it was.

The decision reads:

"Claim denied. Question referred back to Management and representative of Brotherhood . . . for check and investigation to determine if under efficient and economical operating it is possible to assign more mail handlers at Fort Worth 8 consecutive hours per day, exclusive of the meal period."

If we limit ourselves to the text, only one meaning can be given this decision, namely, that the claim of the employes, that under the rules all mail handlers should be assigned to eight consecutive hours' work, was erroneous. The reference back did not, by its terms, qualify the denial of the claim.

It may be that, to avoid a deadlock in the Line Board, which would have had the same practical result as a denial of the claim, the employe representatives on the Line Board accepted the decision as the best way out, hoping that something might develop from the reference back. Whether this was the motive or not, the decision was made.

The employes, however, contend that the text of the decision did not correctly set forth the actual decision; that the actual decision was a mere reference back for further handling. The two employe members of the Line Board stated that this was their understanding of the actual decision, and that the words "claim denied" should be deleted from the text as issued. These statements were contained in letters signed by the two members on January 23 and January 24, 1934, to the chairman of the Board. The record shows, however, that the decision was reached in executive session; that the chairman was directed to write the decision as arrived at; that on January 16, 1934, the chairman prepared a draft of the decision and sent it to each of the members; that the form of this decision, including the words "claim denied," was identical with the text of the decision as later promulgated; and that on January 17, 1934, the two employe members wrote the chairman approving the draft. On receipt of these letters of approval, on January 17, the decision was announced. Under all the circumstances, we think it was too late for the employe members of the Board thereafter to attempt to set the decision aside, on the ground that they did not know what they were doing when they approved it.

(3) Was the decision lawfully arrived at? We conclude that it was. The record is clear that the Board members considered the claim and arrived at a decision in executive session. As has been stated, the actual text of the decision was drafted, immediately following the meeting, by the chairman, who had been authorized to do so by the Board, and copies of the draft were sent to and approved by the members. Clause 7 of the agreement creating the Line Board provided that:

"All decisions of the Adjustment Board shall be approved by a majority vote of the full membership thereof unless otherwise mutually agreed, in which case an equal number of representatives of the employes and representatives of the management shall vote and a majority of those voting shall decide the dispute."

This is the only provision in the agreement applicable to the method of arriving at decisions. There is nothing, either in the agreement or as a matter of law, which would render the decision invalid on the mere ground that after the substance of the decision had been arrived at in executive session, the proposed text of the decision had been approved by the members outside of an executive session.

Finally, the employes take the position that even if the decision could be regarded as binding, it does no more than deny certain monetary claims up to the date of the decision, and that claims for monetary compensation arising subsequent to the decision could properly be asserted. But, in denying the claim, the decision necessarily determined that the cited rules did not sustain the employes' position, and this determination must be regarded as the real substance of the decision, the denial of compensation being a mere consequence flowing from this determination. If the claim had been sustained, the employes would hardly contend that the decision was not binding upon the carrier in the future.

We conclude, therefore, that the decision of the Line Board was lawfully arrived at; that it disposed of the issues, which were the same as those involved in the present proceeding; and that since the employes had agreed in advance to be bound by it, they cannot here question it or ask us, in effect, to set it aside by rendering a contrary award upon the same issues.

In reaching this result, we do not pass upon the merits of the controversy, but hold merely that the Line Board decision, and the agreement of the parties to be bound by it, is controlling with respect to the claim here presented. The record does not establish that any of the practices respecting the mail handlers at the Fort Worth Passenger Station have so changed, since the decision of the Line Board was rendered, that they cannot be regarded as covered by that decision. That decision gives the employes the right to make a joint check and investigation with respect to the assignment of mail handlers at the station in question. If, as a result of any such joint check or investigation, or otherwise, the employes conclude that practices are being engaged in of a sort not covered by the Line Board decision, as construed herein, they are at liberty to re-submit the case.

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 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 the parties are bound by the decision of the Line Board of Adjustment dated January 17, 1934, denying a claim involving the same alleged violations of rules as in this dispute.

AWARD

Claim denied, without prejudice to the right of the employes to re-submit the case on a showing that practices are being engaged in at the Fort Worth Passenger Station of a sort not covered by the decision of the Line Board of Adjustment of January 17, 1934, as construed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of July, 1939.