Award No. 1412
Docket No. CL-1453

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that one day's pay at $4.84 be paid to Mr. Earl Powers, senior qualified extra baggage-mail handler for August 19, 1939 account of not being called to fill temporary vacancy of one day during the absence of R. LeTourneau, who was the regularly assigned occupant of baggage-mail handler position at Central Station, Chicago, Illinois."

JOINT STATEMENT OF FACTS: "Mr. LeTourneau, regular assigned baggage-mail handler was off duty on August 19, 1939, and his position was blanked. The position in question was placed on the bulletin board on June 3, 1938, by Mr. J. A. Anderson, Mail and Baggage Agent, Central Station, by bulletin notice No. 28, reading as follows:

> 'Vacancy exists in Baggage and Mail Department at Central Station as Baggage-Mail Handler, hours 11:45 P. M. to 8:45 A. M., Central Standard Time, one hour lunch period, rate $4.84 per day, Sundays off.
>
> 'Applications in writing will be considered up to and including June 9th, 1938.'

"Under date of June 21, 1938, the Award Notice was posted by Mr. Anderson, which awarded the position to R. LeTourneau. This position was worked by Mr. LeTourneau six week days each week until on August 19, 1939, on which date it was blanked when he laid off of his own accord.

"Claim was filed in writing with the Mail and Baggage Agent by the Local Chairman on August 26, 1939, which letter referred to the provisions of Award 414 and previous settlements on similar claims which had been adjusted in favor of the employes on the basis of this Award. It was declined by the Agent on the basis of Award 934. It was appealed in the regular manner to the highest officer of the Carrier handling such matters and each officer has referred to Award 934 as his reason for declining the claim."

POSITION OF EMPLOYES: "There is in evidence an agreement between the parties bearing effective date of June 23, 1922 and revised September 1, 1927 from which the following rules thereof read:

> **'Rule 1.**
>
> 'These rules shall govern the hours of service and working conditions of the following employes, subject to the Exceptions noted below:

and 843, and re-affirmed the decision rendered in Award 792, there is no doubt but that the rule in Awards 414 and 934 were relatively the same, and naturally Award 934 governs in the case now before us. There is no need for further argument in this respect, because the facts, rules, opinions and decisions in awards quoted above are matters of record with your division and the carrier is willing to rest this feature of the case and let the Board decide whether the rules concerned in Award 934 are identical or even similar to the Illinois Central guarantee rule, and decide whether the particular case now being considered properly comes within the principles established in Award 934.

"In the handling of this case the clerks cite another case in which the facts were similar to the present case and contend that inasmuch as this particular claim was allowed the present one is to be disposed of in the same manner. The carrier wishes to point out that the case referred to by the employes arose during the period of time we were working under the decisions rendered in the 400 series awards mentioned above. The employes' representative gave as the basis for his claim the decision rendered in Award 414. Copy of the employes' representative's letter presenting claim is attached as Carrier's Exhibit 'B.' Naturally, the carrier in all fairness to the employes endeavors to comply with the principles established by your Board in awards rendered and consequently paid the claim on the basis of the decision rendered in Award 414. It follows, then, when Award 934 was issued reversing the decisions of the former awards, the carrier adopted the most recent decision and declined the claim on the basis of that award. The claim paid under Award 414, therefore, cannot be accepted at this time as a criterion to be used in the disposition or decision in this case, and the carrier requests your Board to so hold in rendering its decision.

"Another factor of great importance in this case is the fact that no extra board is maintained at this particular point. We do have points on our system where extra gangs or extra boards are maintained. At these points the men show up and are used as the occasion arises. This practice, however, is arranged locally and we have no such arrangement in the baggage and mail department at Chicago. At this point when the occasion arises when additional men are needed the senior available qualified furloughed man or men are called back to service in accordance with the provisions of Rule 18 of the clerks' contract. The claimant, however, was not the senior furloughed man, notwithstanding this is irrelevant, inasmuch as the claim has been progressed in his favor, and inasmuch as no violation of the contract is in evidence and no payment due to anyone. It must be remembered, however, that no obligation is placed on the senior furloughed man to report for one or two days work, it being his privilege under the provisions of Rule 18 to wait seven days before reporting back to service after having been called. On the other hand, there is no obligation under any of the rules of the agreement or interpretations thereto for the carrier to compensate anyone for a day when an occupant of a regularly assigned 6-day position lays off of his own accord.

"We have shown without doubt that there was no necessity for our filling the mail handler's position on August 19 when the regularly assigned occupant laid off of his own accord. We have also shown that there was no violation of the clerks' schedule agreement and interpretations thereto in our blanking that position when the regular occupant laid off of his own accord. On the contrary, we have shown that this was permissible under the principles established in this Board's Award 934, and we therefore request that the employes' claim be denied without qualification."

OPINION OF BOARD: The question presented is this. If an employe of his own volition lays off for but a single day, is the carrier obligated by the Agreement to give the position and its pay for that day to another employe?

On reason and authority the answer is an emphatic "No." Nothing could be gained by reviewing the conflicting awards. The question is settled by Award 934, and the well-reasoned opinion therein of the Honorable Frank

M. Swacker, Referee. In that opinion, and the whole thereof, this Referee concurs except for its statement that, in Award 414 which was overruled, a former Chief Justice of the Supreme Court of Minnesota, the Honorable John P. Devaney, went to the point of absurdity.

The basis of the claim is Rule 43. In its first paragraph that Rule deals with employes and provides for their compensation. The second paragraph reads as follows:

> "Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

That guarantee runs personally to the incumbent of a position rather than impersonally to the job itself. That quite aside, there is nothing in the Agreement which makes mandatory the filling of a position when its regular occupant absents himself as briefly as was the case here.

The argument that, right or wrong, the erroneous interpretation in Award 414, to which this carrier was not a party, has become a part of its contract cannot be allowed. Of course, the effort should be to get interpretations settled and keep them so. But referees are human and so not immune from error. When experience and further consideration disclose error, as they have here, it is impossible to conclude that there is impropriety in rectifying the error and making the correction operate equally on all concerned.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1941.