Award No. 1432
Docket No. CL-1454

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 in behalf of Frank L. Johnson, L. A. Umhoefer, Frank Shugar, and other clerks affected who hold seniority rights on the Iowa Division clerical seniority roster for wage losses sustained from June 4, 1939, due to action of the carrier in abolishing night baggage helpers positions at Manson, Iowa, Fonda, Iowa, and Ackley, Iowa, coming within the scope of the Clerks' schedule agreement and assigning the work to contract draymen not covered by said agreement."

JOINT STATEMENT OF FACTS: "Prior to the abolishment of the positions the following employes were employed as night baggage helpers, excepting that the position at Manson, Iowa, was carried as station helper.

Manson, Iowa	Frank L. Johnson	$2.95 per day	8:30 P.M. to 5:30 A.M.
Fonda, Iowa	L. A. Umhoefer	4.18 per day	8:30 P.M. to 5:30 A.M.
Ackley, Iowa	Frank Shugar	4.18 per day	7:00 P.M. to 4:00 A.M.

"Prior to the abolishment of these positions these employes performed the following work:

> Handling, sorting, unloading and loading U. S. Mail to and from trains, to and from Star Route Mail Haulers, to and from Local Contract Mail Haulers. Handling, receiving and delivering baggage and express shipments at depot. Opening and locking up of station and generally representing the carrier at night.

"The positions of baggage helpers were abolished and the opening and closing of depots, the operation of station lights, sorting of U. S. Mail off and on two trains was contracted to, on dates and in amounts indicated below:

Point	Position Abolished	Handling U. S. Mail Contracted to	Amount Per Month	Contractor's Outside Business
Manson, Iowa	6-16-39	H. Ricklefs	$15.00	Agent, Railway Express Agency
Fonda, Iowa	6- 4-39	J. Croxdale (Alva Sandberg 2-2-40)	15.00	Government Mail Contractor
Ackley, Iowa	6-10-39	Fred Geise	20.00	Geise Transfer Company"

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:

Mail. However, assuming that they did consume 1 hour or even one hour and a half, this amount of time is still far below the preponderance of an 8-hour shift.

"Continuing this reasoning, it is reasonable to assume that your Board would not in the face of no violation of the contract being in evidence require the carrier to re-establish an 8-hour full-time position at each of the three stations mentioned in the claim and effect an unnecessary increase in the carrier's operating expense, as follows:

Point	Rate of pay per day	Annual Increase	Amount of work performed by contract U.S. Mail Handlers per day
Manson, Iowa	$2.95—Clerks contend $2.95 improper rate — request $4.18	$1525.70	30 minutes
Fonda, Iowa	$4.18	1525.70	30 minutes
Ackley, Iowa	$4.18	1525.70	30 minutes
Total		$4577.10	
Less amount paid contractors		600.00	
NET INCREASE		$3977.10	

We are sure the Board would not want to assume the responsibility of increasing the carrier's operating expenses approximately $4,000.00 a year for 30 minutes work consumed daily at each of these stations in handling United States mail, work which is not solely clerical work and work which the courts have held is not railroad work.

"There has been no violation of the schedule agreement in the handling given this case; on the contrary, the re-assignment was handled strictly in accordance with the provisions of the exception to the Scope Rule, and there can therefore be no violation of that rule. There being no violation of Rule 1—the Scope Rule—there can be no violation of the seniority rule or the principles of seniority or of any other rule of the agreement. This being true, the carrier requests that the claim be declined without qualification."

OPINION OF BOARD: Our conclusions will be stated first, followed by the reasons therefor. We conclude:

1. That the carrier had the right to abolish the positions in question.

2. It did not have the right to take the involved work from all the employes protected by the Agreement and to contract for its performance by outsiders.

3. There is no showing upon which to base an award directing the payment of money to anyone.

1. Concerning the rightful abolition of the positions there can be no question. The work had diminished to such a point that it cannot be reasonably argued that it either required or justified assignment thereto of full time employes.

2. Going to the second proposition: The carrier's argument contra is based upon Exception (a) to Rule 1, which, so far as relevant reads thus:

> "These rules shall not apply * * * to individuals where amounts of less than thirty dollars ($30.00) per month are paid for special services which take only a portion of their time from outside employment or business."

It is difficult to conclude otherwise than that the services in question, from the standpoint of this railroad's operation, were not "special." They were a regular part of its everyday railroad work. The service of stations

as to opening and closing, locking and unlocking and keeping in order, was certainly ordinary railroad work. The handling of mail is railroad work or not according to the special circumstances of each case. It may be all Government work. It may be part Government and part railroad work. Motor bus and air lines get it too. As presently involved, it had been for a long time the work of railroad employes.

Such, in brief, are the reasons upon which it is held that Exception (a) of Rule 1 did not justify the contracting of this work to other than railroad employes.

3. Because their former positions were properly abolished, it cannot be said to what extent, if at all, the named claimants, to say nothing of the unnamed "others," have suffered wrongful loss of compensation in consequence of the action of the carrier. It is for that reason that no award of further payment can properly be made.

The carrier has encountered a practical difficulty, not of its own making. It simply cannot, as matter of common sense and necessary economy, assign the work in question to full time employes. Whether, and to what extent, it may be properly distributed among other employes cannot be determined on this record.

In short, solution of the difficulty must be left to the understanding negotiation of the parties. The case will therefore be remanded to afford opportunity for such negotiation. The Third Division reserves jurisdiction however for the purpose of deciding any further question, within its power, which may be left undecided by the parties themselves and be referred to the Division because of their failure to agree.

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 there has been a violation of the Agreement.

AWARD

Claim sustained to the extent stated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1941.

Dissent to Award No. 1432, Docket No. CL-1454

For the following reason dissent is rendered to this Award:

To hold that carrier did not have the right to engage the services of individuals for performance of the involved work misinterprets the quoted portion of Exception (a), Rule 1, which provides for:

"* * * special services which take only a portion of their time from outside employment or business; * * *"

in declaring that the special services for the carrier in this case were not "special" in that they were "a regular part of its everyday railroad work."

Such conclusion is refuted by that portion of Exception (a) quoted in the Opinion as a precedent to that conclusion. That wording gives direct relation of "special services" to the identification thereof in the reference to the portion of the time which individuals not in the service of the carrier devote from their outside employment to the railroad work, as distinguished from employes in its service.

That is the wording of the rule; that is its proper interpretation; and such has been the unprotested application of Exception (a), Rule 1, in that respect. Nothing either in the rule or in the record indicates or even implies to the contrary as does the Opinion's conclusion that such "special services" were to be something apart from the carrier's "everyday railroad work." Nor is there any evidence of record of reservation to that effect upon negotiation of the agreement, or of any supplementary understanding or practice indicating it.

It can only be concluded that the award is contrary to the agreement and to the meaning and purpose of the rule.

S/ R. H. ALLISON
S/ R. F. RAY
S/ C. P. DUGAN
S/ A. H. JONES
S/ C. C. COOK