

Award No. 1664
Docket No. CL-1584

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY

STATEMENT OF CLAIM: "Claim of the Union Terminal System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that (1) the Carrier violated and continues to violate the agreement extant between the two above named parties, when on and since July 1, 1940, it has failed and refused to classify and rate employees as 'Checkmen,' who have since the said date been engaged in receiving, checking, making collections for, and handling baggage of passengers, and (2) that each employee who has since the said date been engaged as heretofore set out shall now be classified as 'Checkmen' and (3) that the Carrier—the Union Terminal Company—Dallas, Texas) shall make adjustments in rates of pay retroactive to the date of this cause for action, so as to produce a daily rate of not less than Four Dollars and Ninety-Six Cents—(\$4.96), for each and every employee employed and classified as 'Checkman.'"

EMPLOYEES' STATEMENT OF FACTS: "This will certify that there is an agreement in effect between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and The Union Terminal Company.

"This will certify that the following quoted bulletin was posted on the property of the Union Terminal Company at Dallas, Texas, on or about June 24th, 1940, and that notices of similar tenor and purpose appeared in the Daily papers in Dallas, on or about the same date, all reading:

**'THE UNION TERMINAL COMPANY
Dallas, Texas**

NOTICE TO THE PUBLIC

Effective on and after July 1, 1940

RED CAP SERVICE

TEN (10¢) CENTS PER PARCEL

The Union Terminal Company will henceforth handle at its Station for those patrons who desire such service, hand bags and other parcels at the rate of ten (10¢) cents per bag or parcel handled.

PLEASE PAY RED CAP.

**W. C. YOUNG, Station Master,
THE UNION TERMINAL COMPANY,
Dallas, Texas.'**

"The 'theory,' if adopted, would mean that the class and craft of red caps was, on July 1, 1940, wiped out, on this property.

"The carrier here renews its protest against these red caps being permitted to claim under an agreement to which they are not a party; and asks that for that reason the claim be denied.

"In the event this protest is disallowed, the carrier asks that the claim be denied because the advancing of a mere theory is not a legitimate basis for a claim where there is a concretely drawn agreement, and in view of the fact that this Board's functions are exclusively those of interpreting agreements, and not the exploration of questions from a merely speculative standpoint; or the promulgation of theories based on speculation.

"And, further, the claim should be denied because it is clearly shown herein that red caps are not 'check and countermen.'

"Except as herein expressly admitted, the carrier denies each and every, all and singular the allegations of the employees submissions and respectfully requests that the petitioner be placed on strict proof of each and every, all and singular the allegations contained in said submissions."

OPINION OF BOARD: It is the contention of the Employees that on July 1, 1940 the Union Terminal Company of Dallas, Texas, inaugurated a new class of service at its depot and assigned to that service the employees for whom claim is made, and required them to receive and deliver baggage from and to passengers, collect for the service, and account for the monies collected; that this was a new service.

There is in evidence an agreement between the parties bearing effective date of March 1, 1922, amended as of May 24, 1937.

The employees contend that the controlling rule which is applicable in this case is Rule I amended, which we quote:

"These rules will govern the hours of service, working conditions and rates of pay of the following employees:

(1) Employees performing clerical work and office duties, including information clerks, ticket sellers, bulletin clerks, check and counter-men, foreman, assistant foreman, callers, gatemen, train announcers and/or employees performing similar work. Employees embraced in the foregoing shall be classed as group one employees.

(2) Employees engaged in the handling of mail or baggage, truck operators, maids or matrons, porters, janitors, and all other labor employees in and around the Depot, platform, Storeroom, or other facility connected with the station work shall be designated as group two employees."

The Employees contend that under the scope rule of the agreement there is specifically and definitely provided a classification known as checkmen, and that after July 1, 1940 because of the work required of these men, designated as red caps, they became checkmen under the Clerks' Agreement; that they have been paid \$2.40 for the service they have performed; that they should have been paid at the rate provided in the current agreement for checkmen, which is \$4.96 per day, and that claims is for the difference in pay from July 1, 1940.

We review briefly the facts in this case. For many years there have been employed around the larger stations of carriers men to whom the name "red caps" has been given. These red caps assisted passengers in the handling of their baggage to and from trains. In the judgment of the Carrier they were not employees. They received no remuneration from Carrier as wages. They depended entirely for their earnings upon various amounts paid to them by the passengers for personal services rendered in the handling of baggage—such baggage or parcels as passengers ordinarily carry with them into the coaches or sleepers.

On September 29, 1938 the Interstate Commerce Commission rendered a decision Ex Parte No. 72299 I. C. C. 410 in which it held that red caps were employees of the carriers for the purpose of the Railway Labor Act. On October 24, 1938 the Fair Labor Standards Act became a law, 29 U. S. C. A. Sec. 206. By reason of the Interstate Commerce Commission's decision declaring that red caps were employees of the carrier, the red caps automatically came under the provisions of the Fair Labor Standards Act effective October 24, 1938.

Under the terms of this Act Carrier was obligated to see that these red caps earned the minimum wage of 25 cents per hour. Therefore, effective as of October 24, 1938, it instructed the red caps to report each day on prescribed forms, furnished by the Carrier, their names, hours worked, and the total amount received from various persons for service performed in their capacity as red caps. When the amount that the red caps received in tips was less than 25 cents per hour Carrier made up the deficit. When such earnings exceeded 25 cents per hour the red caps were permitted to retain the excess.

In March 1940 Mr. A. J. Pickett, one of the signers on behalf of the Employees to the agreement between the Clerks' Organization and the Carrier, brought suit against the Union Terminal Company in the District Court of the United States for the Northern District of Texas for back wages for the red caps employed by the Union Terminal Company. It was his contention in that suit on behalf of the red caps that the entire minimum wage established by the Fair Labor Standards Act should be paid by the Carrier to the red caps, and that tips, in effect, were a gratuity to be retained in their entirety by the red caps. The District Court of the United States for the Northern District of Texas rendered judgment in favor of Mr. Pickett for the sum of approximately seventy-seven thousand dollars. The Terminal Company appealed to the United States Circuit Court of Appeals for the Fifth Circuit and it reversed the decision of the lower Court. The Referee has been furnished with the briefs, and opinion in the case in the Federal Court and has read all of them.

It is the contention of the Employees that the Carrier on July 1, 1940 advised its patrons by publicly advertising that it was inaugurating a new class of service for the people in that the Carrier would undertake for a fixed charge the transportation of packages to and from the train. We quote from the Employees' submission what they declare to be the issue in this case:

"The simple question before the Board is whether the work performed by the employees concerned in this dispute is **SIMILAR** in nature and kind to the work performed by employees classified and rated as checkmen. IF THERE IS ANY SIMILARITY IN ANY RESPECT, THEN THE POSITION OF THE EMPLOYEES MUST BE SUSTAINED. We know that the work is not only similar to the work performed by checkmen, but in most cases is identical, and for this simple reason, the Board must find for the employees."

What is the new service claimed by the employees?

First: the red caps was required to collect for the Carrier its charge of 10 cents for each handbag, grip, or parcel handled by the Company through a red cap employe.

Second: that at the beginning of his tour of duty the red cap was required to report to the station master who would furnish him with a supply of tags.

Third: when any handbag, grip, or parcel is offered to the red cap by a passenger, red cap will attach to each article one of these tags, detach the coupon from it and give such coupon or coupons as the case may be to the passenger. The portion attached to the passenger's handbag, grip, or parcel must not be removed at any time under any circumstances. After the

service is performed and the property returned to the passenger, red cap will collect 10 cents for each tag so used.

Fourth: at the end of tour of duty the red cap will again report to the station master and will return to him all unused tags, account for and pay the station master for all tags not returned.

Is this a new service required of these red caps after July 1, 1940 as contended by the Employees? The use of tags or checks by red caps has been the practice since about 1926. It is true that there has been some change in the tags but no material difference can be noted between them. Reporting to the Carrier the amount received was in effect after October 24, 1938 and was the practice in effect at the time this same petitioner made an agreement covering the red caps effective January 1, 1940.

The turning over of the monies received is, in effect, no different from the practice formerly used by the red caps in accounting for monies received. We can come to no other conclusion under this record than that there was no new or different service required of these red caps after July 1, 1940, but even if there was a new class of service after July 1, 1940 this would not in itself afford a legitimate basis for a claim so long as the work involved in the new class of service was not in contravention of the agreement with the class or craft holding agreement for that work. It must be kept in mind that this claim is not filed for a violation of the red caps' current agreement between the Union Terminal Company and the Employees dated January 1940 but this claim is based upon a violation of Clerks' Agreement of March 1, 1922, amended as of May 24, 1937, claim being made under Rule I amended.

It is claimed by the Employees that the work these men are now required to perform is similar to that performed by checkmen under the Clerks' Agreement. It is the contention of the Carrier that there are two classes of baggage of passengers of the Company. First: hand baggage consisting principally of handbags, grips, etc. which ordinarily is transported in the car in which the passenger rides and is in the custody of such passenger. Second: car baggage, which consists of trunks and the larger and heavier articles checked on the passenger's transportation, transported in cars provided for that purpose, and retained in the custody of the Carrier until arrival at destination and delivery to owner or his representative upon surrender of the baggage check.

The first class of baggage, to wit, handbags, has always been handled by red caps. Second class of baggage, to wit, car baggage has always been handled through checkmen or countermen. The record shows that there is a material difference between what is required of a red cap and of a checkman or counterman.

The duties of a red cap simply consist of the physical handling of baggage, the attaching of a tag to each piece, marking of car space information thereon, the collection of 10 cents for each piece handled, the securing at the beginning of his tour of duty of a supply of tags, and lastly, the remitting at the end of his tour of the monies collected and the unused tags.

The agreement contains no specific definition of check and countermen nor of any classification. The determination of this question then must and is legitimately to be made on what have been, during the life of the Clerks' Agreement, the established duties of this classification. Carrier sets forth a brief summarization of the requirements and activities of counter and checkmen:

"Must be experienced in reading tickets and routing; classification to cover excess baggage rates; must have some acquaintance with ticket tariffs to compile certain baggage rates based on route of ticket. Some tickets are good for 100 pounds, other for 150 pounds free. Other tickets are not good for the checking of baggage. Some tickets require collection of transfer charges where there is transfer of baggage between stations at junction points.

"Corpses are checkable to destination on some tickets; others to junction points. Corpses are subject to certain charges. Corpses must be accompanied by burial permit which the check and counterman must know is in compliance with the law. Baggage delivered to ware room is weighed in by the Receiving and Delivery Clerk, record is made on weight slip. This slip is put in a carrier tube and dispatched to the check counter where check and counterman transfers information to weight sheet. Baggage on hand over twenty-four hours accrues storage charges and he adds on weight sheet storage check number and charges. If baggage is received under C. O. D. check this information is added to weight sheet. When baggage is delivered the number on weight sheet is marked out by check and counterman. At close of day's business open numbers remaining on weight sheet which have not been marked out, as delivered or checked, are checked against baggage on hand; remaining information on weight sheet is copied to a new weight sheet for the next day. Each piece of baggage checked must be recorded on a form in triplicate, showing the check number, destination, etc., and form and number of transportation.

"Make daily reports of collections and credits in connection with storage charges, excess, C. O. D. collections, baggage forwarded under C. O. D., excess valuation. Files are maintained at counter used in replying to telegrams for information as to checking or passing record. Check and countermen handle wire requests on baggage which passengers at times fail to check. They make daily reports to Auditor covering storage and collections; monthly reports covering C. O. D. checks issued and received, excess collections made; make daily milk reports, monthly milk reports, newspaper reports; check return bills and transfer bills sent in by train baggagemen; give public considerable information concerning baggage rules.

"Required to take declaration of value of baggage checked interstate on which collections are made on amounts over \$100.00. Check and countermen are bonded."

After a careful reading of this record this Board is of the opinion that the red caps have been performing no different service from that which they have performed in the past. That there is a separate and distinct service that is recognized as red cap service is shown by the fact that there is in existence an agreement, dated January 1, 1940 covering red caps, between the parties involved in this claim.

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 was no violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1941.