

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

**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 that:

(1) The carrier violated the provisions of existing Wage and Rules Agreements when it paid Mail and Baggage Handlers

(a) in the service less than 90 days a rate less than 54½¢ per hour during the month of December, 1940, and;

(b) in the service less than 90 days a rate less than 64½¢ per hour during the month of December, 1941, and;

(2) That the carrier shall be required to make reparation to the employees involved, by the payment to them of the difference between the rate paid and the agreed-upon rate of 54½¢ per hour prevailing during December, 1940 and the agreed-upon rate of 64½¢ cents per hour prevailing during the month of December, 1941.

**EMPLOYEES' STATEMENT OF FACTS:** 1. The Brotherhood of Railway Clerks has been the duly accredited representative of certain employees of the carrier, including Mail and Baggage Handlers, since 1919 and has negotiated with the carrier all agreements covering wages and working conditions of such employees.

Mail and Baggage Handlers have been included within the Scope Rule 1 of the following Agreements governing hours of service and working conditions:

National Agreement between the Director General of Railroads and the Brotherhood of Railway Clerks, effective January 1, 1920 to March 1, 1924, and Agreements between the carrier and the Brotherhood, effective March 1, 1924 to February 16, 1936 and February 17, 1936 to date.

2. On April 13, 1920, an Agreement (Employees' Exhibit A) was signed, reading as follows:

"Effective April 1, 1920, there will be a reclassification of employees in the Baggage & Mail Department at the Union Station, Kansas City.

"Baggage and Mail Handlers until they have been in service 90 days will receive \$3.80 per day. Baggage and Mail Handlers who have been in the service more than 90 days will receive \$4.10 per day."

had not actually consented to the arrangement, we assert that what this Division of the Board has decided in similar cases is equally applicable here. In Award 1645 the Board said, in part:

"What was said in Award 1289 is of peculiar applicability to the situation presented here. The violation occurred September 1, 1931. It continued without protest from the Organization until December 11, 1940. \* \* \*

"\* \* \* Having stood by for nine years, with full knowledge of the facts, without protesting the arrangement the Organization should not now be allowed to assert a claim for violation of the agreement."

Relying on the decisions rendered in Awards 1289 and 1645, the Carrier contends that, even if the claimants had not agreed to the arrangement set up in 1930, their laches for eleven years thereafter should preclude the Board from considering the merits of the claim. We therefore respectfully ask the Board to sustain the position of the Carrier on the following grounds:

1. That the rate of forty cents per hour, established in 1930 for extra men hired for the Christmas mail rush, had the approval of the Organization.
2. That such approval constituted a bona-fide agreement respecting the rate to be paid these men.
3. That the claim of the Organization that the arrangement was not concurred in by it is untenable, as their conduct for eleven years proves conclusively to the contrary.

**OPINION OF BOARD:** The record shows there is an agreement between the parties establishing graduated rates of pay for Mail and Baggage Handlers, i.e., in service less than 90 days, 90 days to 1 year, 1 year and over. In the opinion of the Board the proper rate of pay, for additional Mail and Baggage Handlers employed during the Christmas rush period, is that applicable to those in service less than 90 days. Under the facts and circumstances of this particular case the Board holds that such rate should be applied in the future and claims for retroactive compensation should be denied.

**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 proper rate of pay of additional Mail and Baggage Handlers employed during the Christmas rush period, in the future, shall be that applicable to those in service less than 90 days, and claims for retroactive compensation are denied.

#### AWARD

Claim (1) sustained; Claim (2) denied for reason stated.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1942.