

Award No. 4184

Docket No. CL-4253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that all Clerks working in the Baggage Room at the Main Street Station, Richmond, Virginia, between the hours of 7:00 A. M. and 12:00 Midnight, be allowed \$10.00 per month and that Clerk working between Midnight and 7:00 A. M. be allowed \$5.00 per month, retroactive to January 1, 1944, this compensation to continue so long as the employees concerned are required to handle delivery and receipt of baggage to and from the Clarence Wyatt Transfer Company and work incidental thereto.

EMPLOYES' STATEMENT OF FACTS: For many many years the Carrier has maintained tariffs and otherwise advertised to the public that it provided—for specified sums—the service of delivering baggage on arrival at Richmond, Virginia, as well as the service of picking up baggage at homes, hotels, bus stations, other railway stations, etc., for delivery to the Main Street Station for outbound movement.

From as far back as the early twenties, up until about the end of 1939, the Richmond Baggage Transfer Company and its successor, the Richmond Transfer Company, held contract with the Carrier to handle the pickup of all City baggage at the homes, hotels, bus stations, etc., for delivery to the Main Street Station for outbound movement, as well as the delivery from the station to like places on inbound movement.

Prior to the depression, which began around 1930, the Transfer Company maintained a small office in the rear of the warehouse of the Main Street Station for which it paid the Carrier a stipulated sum of rent, in later years being relieved of the rent, the office being furnished the Transfer Company free of charge.

Prior to the depression, the Transfer Company maintained a force at the Main Street Station which worked out of its Transfer Office in the rear of the Warehouse, such force meeting all incoming trains, soliciting, writing up and collecting for the delivery of baggage, taking calls from City patrons for the collection of baggage to be delivered to the station, etc.

Prior to the depression, the Transfer Company did a tremendous business. As an aid to serving the public, the Transfer Company, by and with the consent of the Carrier, paid to the clerical employees in the Main Street Baggage Room a commission on each dollar's worth of business written up for both City delivery, as well as the taking of calls for baggage to be picked up and delivered to the station, settlement of accounts being made with the Transfer Company at the end of each month, commissions of the employees being deducted when each settlement was made.

OPINION OF BOARD: The historical background of this claim is as follows:

For many years the Carrier has maintained a service at its Main Street Station, Richmond, Virginia, and elsewhere on its system whereby passengers can have their baggage picked up and delivered to the station for checking on baggage cars to destination. Likewise, passengers can have their baggage arriving on trains delivered from the station to their residence, hotel, etc.

Prior to April 13, 1940, this service at Richmond, Virginia, was performed by the Richmond Transfer Company under contract made February 1, 1921, with the Carrier and the Seaboard Air Line Railway Company (joint user of station facilities). Effective February 1, 1939, the Carriers entered into a contract with the Railway Express Company providing for that agency to handle pick-up and delivery service at various stations not including Richmond. The contract with the Richmond Transfer Company was cancelled on April 13, 1940, and the contract with the Railway Express Company was extended to cover the Richmond Station.

On October 4, 1947, the contract with the Railway Express Company was cancelled and a similar contract was entered into with the Wyatt Transfer Company.

Prior to 1930 the Richmond Transfer Company maintained a small office in the rear of the warehouse at Main Street Station for which it paid rent to the Carrier. Later the Transfer Company was relieved of paying rent and received the use of the office free of charge.

The Organization contends that as an aid to the public the Transfer Company, prior to 1930, paid to clerical employes in the Main Street Station Baggage Room a commission on each dollar's worth of business written up for both city delivery as well as calls for baggage, and that this commission was paid by and with the consent of the Carrier. The Carrier emphatically denies that it was a party to any such arrangement and contends that such denial is supported by the fact that there is no provision in the contract between the Carrier and the Transfer Company which refers to such an arrangement. Also, there is nothing in the Agreement between the Carrier and the Clerks' Organization relative to such an arrangement.

The Organization states that during the period between January 1940 and January 1944 the Railway Express Company employes in the main, handled the baggage in question, thereby relieving the Carrier's employes involved of the work. Later, the Manager of Baggage, Mail and Express Traffic resumed the handling of clerical work involved with the pick-up and delivery of baggage. Hence the claim is for a flat sum to each clerical employe working from 7:00 A. M. to 12:00 midnight of \$10.00 per month and \$5.00 per month for employes working from midnight to 7:00 A. M., based upon the last arrangement had with the Transfer Company which continued to January 1, 1940.

Cited in support of the claim are Rules 44 (Maintaining Rates) and 45 (Preservation of Rates); also, violation of Section 6 of the Railway Labor Act as well as Rule 65 (arbitrarily changing compensation of involved employes). Awards 611, 613, 626, to 629, 3261 and 4147 are cited on adjustment in rate of pay. Cited on higher rated positions are Awards 751, 1264, 1440, 1514, 1518, 2262, 2270, 2424, 2540, 2585, 2785, 3103, 3106, 3366, 3446, 3503, 3650 and 4131, and are contended to be in point. The Employes claim, furthermore, that the arbitrary action of the Carrier in turning the work over to the Railway Express Agency in April 1940, thereby reducing earnings of employes involved herein, was in violation of Rule 65 as well as Section 6 of the Railway Labor Act. In this connection, Decision 2454 of the U. S. R. R. L. B. is cited as involving the same situation.

There were argued in defense of Carrier's position in refusing to pay the claim, numerous Awards on the "burden of proof" doctrine and it was maintained Claimants have not met this burden. Also, the claim is made that the Carrier was not a party to any understanding or agreement whereby

an allowance was made to Baggage Room employes and, therefore, that no obligation exists, express or implied, to pay such allowance; that there is nothing in Agreements Nos. 6 and 7 which provides that the Carrier must assume responsibility of any allowance made to Carrier's employes by outside concerns when the Carrier is not a party to the arrangement under which such allowances were made; that the burden of proof is with the Petitioner and it has not been met. The Carrier also claims that the granting of additional compensation would be the authorizing of an increase in wages which is not within the power of this Board, citing the Railway Labor Act, Section 6.

This claim turns on the fact situation as to whether or not the Carrier can be charged with responsibility in the matter of additional compensation given to employes by an outside concern. It has been argued that the Carrier had knowledge of the arrangement and acquiesced in the same. However, to properly solve the question presented, it is necessary to look to the provisions of the Agreement as between the parties herein involved, namely, the Carrier and Claimants. No provision of the Agreement covers the matter in question. In order to be successful in this claim it would be necessary that Claimants show that the Carrier was a party to the additional compensation arrangement by direct evidence. This cannot be established by inference and it cannot be implied. Only direct evidence will suffice legally. There is no showing made here that is sufficient to bind the Carrier to continue the separate arrangement employes had with the Transfer Company. A reading of awards cited will show a clear line of demarcation distinguishing the question presented herein and those where claims have been allowed. As stated, to bind the Carrier there must be clear evidence to the effect that the Carrier was a party to the previous arrangement between Claimants and the Transfer Company. This cannot be established by inference or cannot be implied under the law governing such Agreements.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of November, 1948.