Award No. 4493
Docket No. CL-4424

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement, beginning in January, 1948, when it arbitrarily changed a long established practice for the disposition of cash overages and cash shortages of Ticket Clerks. Also,

(b) Claim that the Carrier be required to reinstate the practice that was in effect for many years and that all employes who have been adversely affected be reimbursed for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: For many years, prior to January, 1948, the following practice was in effect governing the disposition of cash overages and cash shortages of Ticket Clerks at the Union Station:

1. If a Ticket Clerk was short in his daily cash he paid that shortage the following day. And

2. If a Ticket Clerk was over in his daily cash \$5.00 or more such overage was charged into the accounts and was a net profit to the Company. And

3. If a Ticket Clerk was over \$4.99 or less in his daily cash, this overage, and all other like overages occurring during the month, were used at the end of the month to offset any shortages that had been paid by the Ticket Clerk during that month with refund being made of the shortages that had been paid to the extent possible from such overages. And

4. If, at the end of the month, the total of daily overages of \$4.99 and less were in excess of the shortages the Ticket Clerk had paid such excess was returned to the Ticket Clerk.

In January, 1948, following the close of December, 1947 business and accounts, the Carrier arbitrarily discontinued the foregoing practice of years and refused to follow such practice for December, 1947 and subsequent months.

Since the above change was made by arbitrary action of the Carrier the Ticket Clerks have been required to pay all shortages in their daily cash, just as in the past, but the Carrier has appropriated all overages, with the result:

"If claimant feels that injustice has resulted which requires corrective measures, it must resort to negotiation to secure the remedy."

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"It may be as we have indicated that the contract did not contemplate a situation arising such as we have here and for that reason provisions governing such a situation were not included. But we cannot supply that which the parties have not put in the agreement. We can only interpret the contract as it is and **treat that as reserved to the carrier which is not granted to the employes by the agreement."** (Emphasis supplied.)

The Carrier, therefore, requests that the claim be dismissed by the Board. If, however, the Board should accept the claim the Carrier requests that it be denied as without any support in the governing agreement.

As to (2): Neither in conversations nor correspondence concerning the dispute did the Employes allege a violation of a governing agreement. The first allegation to that effect is contained in the letter of the General Chairman to the President of his Organization, September 21, 1948, in which Claim (a) was stated in the same language given hereinabove. Therefore, even if the employes had a claim subject to the jurisdiction of this Board, such claim was not handled in the usual manner, as called for by Section 3 First (i) referred to.

Not having been advised by the Employes as to what portion or portions of the agreement they may contend, in their ex parte submission, have been violated, the Carrier is at a loss to make further statement with respect thereto, other than to say that the subject matter of the dispute is not covered by the governing agreement.

Exhibits not reproduced.

OPINION OF BOARD: Prior to January 1948, shortages and overages of Ticket Clerks were handled in the following manner: If a Ticket Clerk was short in his daily cash he paid the shortage on the following day. If he was long $5.00 or more, it was treated as a profit to the Company. If he was long $4.99 or less in his daily cash, such an overage and all similar ones accruing during the month were used to off-set shortages accruing during that month. If the overages proper to be thus off-set against shortages during the month exceeded such shortages, the excess was returned to the Ticket Clerk. The Organization contends that this was a practice long followed by the parties. The Carrier does not dispute this fact. In January 1948, Carrier discontinued the practice and advised Ticket Clerks that they would be required to pay all shortages in their daily cash. The Organization contends that the Carrier could not unilaterally discontinue the practice and requests that it be enforced and that employes adversely affected by Carrier's action in discontinuing it be reimbursed for losses sustained.

We think that the method of handling of overages and shortages prior to January 1948, constituted a practice. There is nothing in the current Agreement in conflict with its existence. In fact, the current Agreement abrogates only those practices in conflict with its terms. Rule 70, current Agreement. A dispute in the handling of shortages and overages with Ticket Clerks is a dispute "concerning rates of pay, rules or working conditions" within the meaning of Section 2, Railway Labor Act. As such, it is clearly within the purview of this Board to handle. The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Awards 2436, 1397, 1257. We are obliged to say, therefore, that the Carrier could not properly modify or abrogate the practice except by negotiation.

It is contended by the Carrier that its action in abrogating the practice should be sustained on the theory that it tended to make affected employes corrupt and less efficient. In interpreting a practice of long standing, as well as a rule of an effective Agreement, we must assume the honesty of purpose of those concerned. The overages and shortages with which we are here concerned, are those accruing through error. As to them, the practice afforded a method of protecting employes against the hardships of unintentional mistakes. If overages or shortages occur through dishonesty or corrupt motives, disciplinary action affords the Carrier an appropriate remedy. The contentions of the Organization are sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 specified practice has not been abrogated or modified by agreement and is, therefore, in force until changed or nullified by negotiation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of July, 1949.