Award No. 4646
Docket Number CL-4704

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

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:

(a) The Carrier violated the Agreement February 28, 1948, when it removed Henry Franks, Frank Gossett and Angie C. Wilkinson from their respective positions of Mail and Baggage Handler;

(b) Henry Franks, Frank Gossett and Angie C. Wilkinson be paid at pro rata for the period 6:00 PM to 12:00 Midnight (less meal period) in addition to the amounts they were actually paid for work performed February 28, 1948, and

(c) Mail and Baggage Handler J. E. Masters be paid one day's pay at the overtime rate for February 28, 1948.

EMPLOYEES' STATEMENT OF FACTS: Effective June 26, 1947, Angie C. Wilkinson was assigned position of Mail and Baggage Handler by assignment Bulletin (MBH) No. 252, copy of which, together with vacancy Bulletin (MBH) No. 252, is attached and marked Exhibit 1.

Effective October 11, 1947, Henry Franks was assigned position of Mail and Baggage Handler by assignment Bulletin (MBH) No. 370, copy of which, together with vacancy Bulletin (MBH) No. 370, is attached and marked Exhibit 2.

Effective January 17, 1948, Frank Gossett was assigned position of Mail and Baggage Handler by assignment Bulletin (MBH) No. 461, copy of which, together with vacancy Bulletin (MBH) No. 461, is attached and marked Exhibit 3.

At the date of the claim, February 28, 1948, employees Wilkinson, Franks and Gossett had not been displaced from the positions referred to above and were the acknowledged regular incumbents of such positions.

On February 28, 1948, Assistant Foreman, Geo. C. Shelton, did not show for work account of sickness, and, Mail and Baggage Handler H. L. Baker, whose position is described in Exhibit 7, exercised seniority to fill the Shelton vacancy for the day, which created a temporary vacancy in his (Baker's) position.

The Carrier arbitrarily removed Franks from his own position and required him to fill the position of Baker. In like manner Gossett was required to fill the position of Franks and Wilkinson was required to fill the position of Gossett. The position of Angie C. Wilkinson was either blanked or spread over other employees in the parcel sections.

The Employees protested that the removal of Mail and Baggage Handlers Franks, Gossett and Wilkinson from their regular assigned positions was in violation of the provisions of the governing Agreement (copy of which is on file with the Board and made part of this submission) and filed claim as stated above. Copies of the correspondnce between the parties evidencing the efforts

for days or months, but for a period of part of their regular shift, not under protest but on positions on which they had usually performed relief service.

The Carrier relies on the Opinion of the Board in Award No. 2884, Docket No. CL-2895, that part which reads: "We think that, in accordance with the universal rule of interpretation that all the words of a contract must be given effect if possible, the Carrier should not be required to pay a temporarily transferred employe overtime rates where it is shown that the transfer was not made for the purpose of avoiding the payment of overtime."

It is not the purpose nor the practice of this Carrier to take an employee away from his regular assignment except to meet an emergency condition which cannot otherwise be handled and these were the circumstances in the instant dispute.

The Employees claim Mail and Baggage Handler J. E. Masters should have been called from his day off to work H. L. Baker's position. J. E. Masters was a mail and baggage handler on Section "E" in the sub-basement. His duties consisted of loading sacks of mail on the proper truck for certain trains, during the 3:30 p.m. to 12 midnight shift.

Mail from the Post Office and layover mail from arriving trains moves to a separation dock on an endless belt, where it is dispatched over another belt to section dock for loading to trucks marked for certain trains. There are six docks and each one loads mail for the same trains each night. Section "E" dock loads mail for the Missouri-Kansas-Texas trains, Gulf, Mobile and Ohio and Chicago Great Western trains.

J. E. Masters has never worked at the east end of the Union Station, does not know the work of handling pouch mail thrown off arriving trains, account close connections to outbound trains. One of the requirements on the "Pouch Run" is that the incumbent drive an Elwell-Parker tractor. The Employees do not show that J. E. Masters knew anything about train schedules, the duties of the man on the "Pouch Run" or that he could drive an electric tractor. The Carrier does not even know that he was even available. Had the Carrier called Masters it would still have had to make the same changes in personnel as was done this day to fill these positions with experienced persons.

The Carrier requests that your Honorable Board deny the claim of the Employees. An emergency existed through no fault of the Carrier making it necessary to protect the handling of the U. S. Mail for a period of six (6) hours on Saturday night, February 28, 1948.

Exhibits not reproduced.

OPINION OF BOARD: The parties are in agreement that on the date in question, Claimant Henry Franks held a regular position as Mail and Baggage Handler, hours 3:30 p.m. to midnight; Claimant Frank Gossett held a regular Mail and Baggage Handler position, hours 3:30 p.m. to midnight, and Claimant Angie C. Wilkinson held a regular Mail and Baggage Handler position, hours 3:30 p.m. to midnight.

On Feb. 28, 1948, Assistant Foreman Shelton, hours 5:00 p.m. to 1:30 a.m., who likewise held such regular position, at 4:30 p.m. reported that he could not work due to illness. At 6:00 p.m. Mail & Baggage Handler Baker exercised his seniority rights to the vacancy. Franks thereupon was suspended from his regular work at 6:00 p.m. and assigned Baker's position; Gossett was suspended from his regular work at 6:00 p.m. and assigned Franks' position and Wilkinson was suspended from her regular work at 6:00 p.m. and assigned Gossett's regular position. The regular position of Wilkinson was either blanked, or duties spread over other employes. The Petitioner contends that suspending the Claimants from their regular positions and assigning them to other positions was in violation of the Agreement Rules 6 and 40, and the blanking of Wilkinson's position was in violation of Rules 28, 38 and 43.

It is the Carrier's contention that the sickness of Shelton created an emergency and because of such an emergency it was not a violation of the Agreement to move the Claimants from their regular positions. The last paragraph of Rule 6 is important to that argument and reads as follows:

"The description of duties in bulletins covering Mail and Baggage Handlers positions shall not prevent temporary changes in assignments in the course of a day's work which may become necessary because of irregularities in train arrivals and departures and volume of business to be handled."

Clearly the language quoted above confines such temporary changes in assignments to "irregularities in train arrivals and departures and volume of business to be handled." The illness of Shelton may have caused an emergency in the eyes of the Carrier but such an emergency was not covered by the Agreement and that emergency was met by the promotion of Baker to the vacancy. The conditions allowing temporary changes of assignments as set forth in Rule 6 quoted above do not cover illness or seniority promotions, and where conditions or exceptions are set forth specifically, no other or further exceptions will be implied. See Awards Nos. 2009, 3825 and 4551. It is important to note that Rule 40 of this Agreement makes no provision for "emergencies" such as is contained in a similar rule appearing in other Agreements. In other words, an exception applying to an emergency does not appear in this agreement, but the exceptions are set out specifically as irregularities in train arrivals and departures and volume of business to be handled. Neither of these exceptions is alleged in the instant case.

The Carrier states that no extra employes were available to fill the vacancy by reason of lack of ability, but the record shows that there were regular qualified employes available who could have been doubled over onto the positions vacated, or at least for Shelton's or Baker's positions, without suspending the Claimants from their regular positions.

The intent and purpose of the Seniority and Bulletining Rules is to protect the Employes' rights to the respective positions they had secured, and not to require them to suspend their regular work to absorb overtime, which either they or other regular employes would have earned had such suspension not taken place. This Board has so held in many awards. Nos. 2695, 2823, 3417, 4499 and 4500. And the same principle applies, even if the hours worked are the same as the hours of the employes' regular assignment. The foregoing rulings are hereby reaffirmed and the claims will be sustained.

In paragraph (c) of the claim, the Claimant, Masters, asks for penalty compensation for February 28, 1948, by reason of the blanking of the position held by Wilkinson for six hours, in violation of Rules 28, 38 and 43. We agree with Awards Nos. 1803, 4550 and others that such a claim should be sustained and further agree with previous awards of the Board that such penalty claims shall be sustained at the pro rata rate, and not at time and one-half.

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 violated the Agreement.

AWARD

Claims (a) and (b) sustained, claim (c) sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1949.