

Award No. 5418

Docket No. CL-5394

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that:

(1) The Carrier violated the Clerks' Agreement of September 1, 1944, amended September 1, 1949, when, effective October 1, 1949, it removed the work of handling mail and baggage to and from Trains Nos. 3, 2, 1 and 93, at Jonesboro, Georgia, Agency and assigned same to Mr. L. P. Woolf, Jr., and/or his successors—a non-employee, and that, therefore,

(2) Clerk T. G. Strickland, who has performed this work for many years, shall now be compensated for four (4)—3 hour calls as per Rule 49, i.e., one (1) call for each of Trains Nos. 3, 2, 1 and 93 or total of eight (8) hours' penalty time at his regular monthly rate of \$207.21 per month for each and every Saturday, and for two (2)—3 hours calls as per Rule 49 for each and every Sunday, i.e., one (1) call for each of Trains Nos. 3 and 2, and for four (4)—3 hour calls as per Rule 49, i.e., one (1) call for each of Trains Nos. 3, 2, 1 and 93 on each and every Holiday as outlined in Rule 54, paragraphs (b) and (c)—retroactive to October 1, 1949, to date handling of this work is restored to employes covered by the Scope of the Clerks' Agreement, and that,

(3) Any and all other employes, if any, who may have performed any work at this Station during vacation, sick leave, etc., shall be compensated in like manner.

EMPLOYES' STATEMENT OF FACTS: Clerk T. G. Strickland, with seniority as of October 1, 1931, in Macon Division Seniority District No. 2 (Line of Road) had met the above mentioned Passenger Trains at Jonesboro, Georgia, Agency as part of his regular duties and without compensation beyond that of his regular monthly salary from time of his employment up until overtime for hours made beyond his assigned hours was granted, effective February 11, 1943, as result of the System Committee having filed a claim therefor on January 26, 1943 when the matter first came to its attention.

There is an Agent and a Clerk-Operator on duty at this Station but neither of these employes is affected in any manner by this claim.

This case presents no point involving the right of the management to discontinue work under a collective bargaining agreement and assign it to someone not covered by such collective bargaining agreement. A study of the "Statement of Claim" of record in this case indicates an attempt to create that impression—that is, that the Company took the work away from claimant Strickland and assigned it to someone not coming under the clerks' agreement. The Company admits the work was taken from claimant Strickland. But the Company does not admit that it assigned the work to someone else. The Company admits that for all practical purposes involving it and its employees the work of handling the mail between the station and the post office disappeared. Therefore, when claimant Strickland no longer handled the mail this Company did not reassign the handling of the mail to anyone else. This Company lost absolutely all and every iota of control over the handling of the mail when the United States Post Office Department discontinued the arrangement that had existed up to October 1, 1949. Having lost every vestige of control over such handling of the mail it had no right whatever to assign it to anyone else and in fact no other assignment took place insofar as concerns this Company and its employees.

Therefore, there is in this case no factor of the usual case in which work under one collective bargaining agreement is discontinued and whatever remains of the work is assigned to someone not covered by that agreement. Here certain work disappeared insofar as this Company and its employees are concerned—disappeared in the sense that this Company lost all control over such work. Having lost control it did not reassign the work to either employees coming within the scope of the collective bargaining agreement of any class, or a person not in the employ of the railroad.

SUMMARY

The sole point involved in this case is whether the Company took away from Claimant Strickland the work of handling mail between the station and post office at Jonesboro and assigned it to a person not covered by the agreement between this Company and its clerical employees.

The Company has shown that it did not voluntarily take the work away from Claimant Strickland. The Company has shown that the work of handling the mail involved was work which was within the control and jurisdiction of this company only so long as the United States Post Office Department desired that work to be within the jurisdiction and control of this Company. The obligation of handling such mail can be imposed under postal laws and regulations on this Company at the will of the United States Post Office Department. Having been so imposed it can be taken away by such Department. That is exactly what happened in this case. This Company so handled the mail for some time prior to October 1, 1949. Then the United States Post Office Department took over the work itself. Under the new arrangement it was no longer necessary for Claimant Strickland to handle the mail. As a consequence he lost certain special compensation theretofore accruing to him for handling such mail. But this Company is under no obligation whatever to compensate Claimant Strickland for the loss he sustained. So long as this Company handled the mail for the U. S. Post Office Department it was willing and under obligation to permit Claimant Strickland to perform the work, but when the work was withdrawn from this Company by the United States Post Office Department then and there whatever obligation existed on the part of this Company towards Claimant Strickland in connection with such work ceased to exist.

Accordingly, this case should be dismissed by the Third Division and the Company requests that it so order.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is for pay on the call basis for all work claimant had been performing for several years prior to October 1,

1949, in handling mail and baggage to and from the post office at Jonesboro, Georgia, and to, from, on and off trains described therein on the basis that on such date the Carrier removed such work and assigned it to a non-employee. It springs from the fact that the United States Postal Department which had been permitting the Carrier to look after the mail under some sort of an agreement, not here material, advised the latter by letter that it had contracted the handling of its mail at Jonesboro between the post office and the depot to a mail messenger, and directed the Carrier, effective October 1, 1949, to instruct its employes at that point to discontinue all such service theretofore performed by them, if any, since any compensation theretofore allowed by the department for such service would be discontinued.

There is some dispute between the parties as to whether this letter comprehended the work of loading the mail into and off the Carrier's cars after it reached the depot. This calls for construction of the letter. We have carefully examined it, and, when viewed in its entirety, construe it to mean that all mail handling work, including that just referred to was encompassed by its terms. This construction, we believe, is supported by the fact the record makes it clear that on the date the new messenger commenced his duties under his contract with the Postal Department he took over, and has since continued to perform, all the work in question.

In the recent past, except for two or three distinguishable features to which we shall presently refer, we have been called upon to decide claims based upon the premise that work of the type here involved was removed from the Agreement between the Carrier and Employes when it was taken from the Carrier and given to a non-employee of the Carrier by the Postal Department under contract. See Award Nos. 5165 and 5237. We have carefully reviewed such Awards, which we pause to point out involved identical Postal Rules and Regulations, and have concluded the decisions therein reached are sound and should be adhered to. This conclusion compels a denial Award in the instant case unless there is something to be found in its confronting facts to make such Awards clearly distinguishable. We therefore give our attention to that question.

As we read the record the only facts in this case that differ essentially from those involved in the Awards to which we have referred can be stated thus: (1) Here the record discloses an agent was on duty at the Jonesboro Station a part, and perhaps all, of the time mail was being handled at the depot. There the stations were closed. (2) Here the claim in part is for the handling of baggage while there no work of that character was included in the claims as filed.

Turning again to the Opinions in Awards Nos. 5165 and 5237 we observe much stress was placed on the fact rules and regulations of the Postal Department make it the duty of the mail messenger to receive the mail from and deliver it to mail cars if there is no Carrier employe on duty at the time. However, we also note it is clear from those Opinions, particularly the Opinion of Award No. 5165, that under such rules and regulations, regardless whether a station is open or closed, the Postal Department has the right, whenever it desires and sees fit to do so, to take over and perform all such work. It should perhaps be added our own independent investigation of the rules and regulations of the department convinces us of this fact even though we had not previously so indicated. To illustrate, one of the regulations (Section 92.43, par. (a)) referred to in Award 5165 specifically states that in some circumstances where the department employes a mail messenger the railroad shall not be required to receive mails from and deliver them into the mail cars. Another Postal regulation, not mentioned in such Award, but nevertheless as binding as the others, expressly provides that the department may provide for such service at any post office or postal station and relieve the Company of the performance thereof whenever it deems that action advisable. That, as we have indicated, was just what the department did in this case. The result is the principle announced in Awards Nos. 5165 and 5237 becomes applicable and decisive.

The fact this claim involves handling of baggage is of no consequence under the confronting facts and circumstances. The record is devoid of any proof that Carrier had ever assigned that type of work to claimant or that he had performed it. Indeed claimant makes no attempt to establish that portion of the claim and even fails to deny Carrier's forthright statement that it had never assigned him to perform any work of that character. In such a situation we cannot hold claimant was deprived of the work of handling baggage. Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.

We fail to find anything in the facts of record in this case to take it out from under the rule announced in Awards Nos. 5165 and 5237. Therefore, based on such Awards, we hold that under the existing facts and circumstances the work in question did not belong to the claimant under terms of the current Agreement when it was taken over by the United States Postal Department and that thereafter the Carrier did not violate such Agreement in failing to pay him for work over which it had no control.

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 facts of record disclose no violation of 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 8th day of August, 1951.