

Award No. 6004
Docket No. CLX-5733

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that (a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective September 1, 1949, was violated at Jackson, Mississippi, in making run-around on calls of Frank Colyer and others, occupants of regular positions, in violation of their seniority rights; and

(b) They shall now be compensated at time and one-half rates for a minimum of 8 hours on each day the agreement violation continued.

EMPLOYEES' STATEMENT OF FACTS: Frank Colyer and twenty-five (25) other employees were regularly-assigned at the Jackson, Mississippi Agency during the month of December, 1949, each assignment consisting of five consecutive 8-hour days, with two consecutive days of rest (identity of employees, rate of pay and dates for which claim is filed are listed in Exhibit "A"). During the period December 7 to 20 inclusive, 1949, non-employees (college students who possessed no seniority rights under the Agreement between the parties) were used to perform work to the exclusion of regularly assigned employees on one or both of the days of rest of their assignments.

February 22, 1950, Local Chairman J. C. Lancaster filed claim with Agent L. S. Tague for 8 hours' pay at time and one-half rates on each of the days these non-employees were used. (Exhibit "B") While the claim was in the process of handling, Local Chairman Lancaster secured sick leave and did not re-enter service.

The claim remained dormant until November 29, 1950, on which date Agent Tague addressed Local Chairman D. L. Luckey, stating that Management was agreeable to settling these claims on the basis of pro rata pay, but declining punitive pay. (Exhibit "C") January 13, 1951, Local Chairman Luckey advised Agent Tague that the claim was being advanced to General Chairman George D. Wright. (Exhibit "D").

January 18, 1951, General Chairman Wright appealed to Superintendent Fred Howell, setting forth the basis upon which the Organization supported its claim for punitive rates, citing the language of the Rules involved and precedent Decisions and Awards. (Exhibit "E") January 23, 1951, Superintendent Howell addressed General Chairman Wright, conceding that Man-

That a Carrier may not be required to develop information to serve as a basis of claims against itself has been well established by Awards of this Board. In Award 4821, Referee Edward F. Carter made the following observation:

"A Carrier would not ordinarily be required to search its records to develop claims against itself. But when a claim has been established and **the dates of the violations are determined** the Carrier can be required to supply the names or permit a representative of the Organization to search them out." (Emphasis supplied.)

To the same effect is Award 4372 with Frank L. Elkouri as Referee, in which the following statement from Award 11642 of the First Division was approved:

"* * * We do not propose to require the Carrier to search its records to develop claims for unidentified trainmen on any unspecified dates * * *."

Employees' Statement of Claim refers to Agreement violations at Jackson, Mississippi, "in making run-around on calls of Frank Colyer and others." Such vague and indefinite language would require the Carrier to search its records at Jackson, Mississippi, back to the time of the effective date of the Agreement, September 1, 1949, a task which it is not required to do under the law or the Awards of this Board.

Carrier therefore respectfully requests the Board to dismiss the claim of the Employees as too vague and indefinite to constitute a dispute within the meaning of the Agreement, the Railway Labor Act and the rules of this Board.

(Exhibits not reproduced).

OPINION OF BOARD: The Parties agree that during the rush period December 7-20, 1949, the Carrier used college students as special employees at its Jackson, Mississippi Agency to perform work on the rest days of the claimants, regular employees. In due course the Carrier admitted violation of the agreement and offered reparation to the claimants at pro rata rates of pay.

Under these circumstances the sole issue before us is the proper measure of penalty on the Carrier for its admitted violation. The Organization asks the punitive rate of time-and-one-half for the unworked overtime hours that should have gone to the claimant regular employees. The Carrier contends that pro rata rates are sufficient.

We think we must rule for the Carrier's position here. We reject the principle that the proper penalty rate should be based on what the claimants would have received if they had been given the overtime work to which they were entitled. We adhere to the view that, since the regular employees did not actually work the hours in question and since the persons who did were paid at straight time rates, the Carrier is sufficiently penalized and the claimants are sufficiently compensated when reparation at pro rata rates is provided. The situation is different in respect to holiday work; here either group of workers—those improperly used or those entitled to the work—would be paid at the premium rates named in the agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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's admitted violation of the agreement should be penalized as requested in the claim, but at pro-rata rates of pay.

AWARD

Claim sustained to extent set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1952.