

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

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

1. The Agreement governing hours of service, application of pay rates and conditions of employment, effective September 1, 1949, was violated by the Carrier at Providence, R. I., from January 31, 1950, to April 15, 1950, inclusive, and subsequent thereto, when it started Claimants' shifts between the hours of 12:00 Midnight and 5:00 A.M. without agreement between the Management and the duly accredited representative as required by the provisions of Rule 53, and

2. That claimants enumerated in Employees' Exhibit No. 1 and/or their successors shall be paid at the rate of time and one-half their regular rates of pay for all services performed between the hours of 12:00 Midnight and 5:00 A.M., from January 31, 1950, to April 15, 1950, inclusive, and subsequent thereto until the condition has been corrected, and

3. That Claimants, mentioned in Section 2, above, shall be paid at pro rata rates for all hours less than eight, exclusive of the meal period, that they were not allowed to work after 5:00 A.M., from January 31, 1950, to April 15, 1950, inclusive, and subsequent thereto until the condition has been corrected.

EMPLOYEES' STATEMENT OF FACTS: On January 11, 1950, the Carrier's Superintendent posted the following bulletin in the Providence, R. I., Baggage room at the Passenger Station:

"Providence, R. I.
January 11, 1950.

"Mr. G. A. Gilmore:
CC. Mr. H. Scott

"Wrote Asst. Vice President Perry December 30, 1949 inquiring as to whether or not it is improper to call spare man between the

ployes engaged in such 24 hour operation will not be after 12:00 midnight or before 5:00 A. M. unless otherwise agreed to by the Management and the duly accredited representative."

This Division has been called upon to consider so-called "starting time rules" on a number of occasions. The Awards themselves are of little value—some have sustained and others denied the claims presented. Nor are the reasons of decision assigned of much value, first because the rule agreed upon here differs materially from any heretofore considered by this Division, and secondly because prior decisions have concerned the starting time of regularly assigned employees. Here is presented extra work performed by men called from the spare board.

The distinction last mentioned, between a regular assignment and a call to extra work, is of particular importance to a fair understanding of the rule. It is the practice, and indeed by Rule 43 Carrier is required, to bulletin for bid and regularly assign positions in all cases where work of the type here involved is of a continuing nature. In such circumstances, of course, a starting time rule can be followed.

When work is of a sporadic nature, or in emergencies, then call is made for spare men. Obviously in case of sudden illness or accident on the job, unanticipated traffic requirements, or in other like circumstances it is imperative that such call be made to start at any hour of the day or night.

This being so, it would not be supposed the parties would agree upon a rule which would necessarily have to be broken should the needs of the service require immediate extra work by spare men. Yet this is precisely the position of the Employees here. They interpret Rule 53 as prohibiting the call of spare men to begin work at any time between midnight and five in the morning if other employees are on duty on the same type of work twenty-four hours a day.

No such result is required by the language of the rule. Its title is "Three Shift Positions." It is a fact that extra work in general, and the calls made at Providence here involved, were not on a three shift basis. And the duties performed by spare men, working extra, are not referred to as a "position" either by custom or practice on Carrier's lines, or in the agreement itself.

Turning them to the language of the rule itself, there is nothing to indicate a different intent. The rule regulates the starting time only of shifts of the employees engaged in the twenty-four hour operation. It is silent as to men called for extra work. It is consistent with the necessity of such calls for unusual, irregular or sporadic operations.

It follows that the practice complained of here is in accord with the requirements of the agreement.

CONCLUSION

It is respectfully submitted the claim is without merit and should be denied in every particular.

All facts and arguments used are in accord with handling with Employees on the property.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization, on April 28, 1950, filed a claim for employees who were called to work at the Providence, Rhode Island, baggageroom, between the hours of 12:00 Midnight and 5:00 A. M.

The claim as originally filed covered the period from January 31, 1950, to April 15, 1950, and for "others who may have worked from April 16, 1950, on until this matter is finally decided."

The claimants contend that Rule 53 of the Agreement was violated. Time and one-half is claimed under Rule 55.

The claim as originally filed was denied by the Carrier and appealed by the Organization on May 11, 1950.

On September 5, 1950, the Organization, by letter, asked that the claim be amended to cover all baggagemen called from the spare list to cover shifts between Midnight and 5:00 A. M. for all subsequent dates to April 15, 1950.

The Carrier contends that the amended claim as requested could not be made because it was barred by the time limitations, Rule 22.

We believe that the claim as originally filed was broad enough to cover the employes for dates subsequent to April 15, 1950, and therefore we need not consider the attempted amendment of September 5, 1950.

The Carrier next contends that the claim could only cover the named claimants. With this we cannot agree. The portion of the claim covering others who may have worked subsequent to April 15, 1950, is not inordinate. The employes are readily ascertainable, and they are named as a class. See Award 5923.

The Organization further attempted to amend the claim on September 4, 1951, by the addition of Claim 3. This part 3 was never handled on the property and is a new claim. We, therefore, cannot consider Item 3 of the claim.

Rule 53 provides as follows:

"Rule 53—Three Shift Positions

"When three consecutive shifts are worked covering a 24 hour period at a particular location within a seniority district or subdivision thereof, the starting time of the shifts covered by the employes engaged in such 24 hour operation will not be after 12:00 midnight or before 5:00 A. M. unless otherwise agreed to by the Management and the duly accredited representative."

The claimants were all extra baggagemen called from the extra or spare list to perform extra or unassigned work as baggagemen. They were called to work between the hours of 12:00 Midnight and 5:00 A. M. The baggage-room of the Carrier is operated twenty-four hours a day and covered by three shifts of employes. The claimants perform the same class of work as the employes assigned positions on the three shifts. They were within the same seniority district, they were engaged in the same work, and they were required to start work within the time prohibited by Rule 53. Rule 53 covers all employes doing the same class of work as the men regularly assigned to the three shifts.

The Agreement was violated by calling the claimants to work between the hours of 12:00 Midnight and 5:00 A. M.

Rule 55 is the overtime rule and is applicable to the claims. They were entitled to be paid at the rate of time and one-half. Therefore, all claimants should be paid the difference between the pro rata rate that has been paid to them and their rate 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 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

The Agreement was violated.

AWARD

Claims 1 and 2 sustained in accordance with this Opinion and Findings.
Claim 3 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.