

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

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**PARTIES TO DISPUTE:**

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

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

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

(a) Carrier violated the Agreement on the freight platform at Cincinnati, Ohio, on September 3, 1952, and subsequent dates, when it failed to contact senior employees for extra service, on which dates junior employees were used, and

(b) That James Smith, David Leach and Ray Nichols, as well as other senior employees to be determined from the Carrier's records beginning with September 3, 1952, who were not permitted to work when junior employees performed service, be compensated at the pro rata rate, until such violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Rule 9(e) of the effective working Agreement reads as follows:

"(e) When it is necessary to start additional forces after the usual starting time, every reasonable effort will be made to give this work to the senior extra men."

Under date of September 10, 1952, Division Chairman G. F. Denmark addressed the following communication to Terminal Agent C. R. Grimm:

"Find attached time slip in favor of James Smith, David Leach and Ray Nichols, Extra Truckers, Smith Street. On Sept. 3 it was necessary to start additional forces, other than the regular assigned force, and Rule 9 was not complied with, in as much as no effort was made to contact senior men, but junior men were permitted to work. This is in violation of Rule 9.

Would appreciate a prompt reply."

Terminal Agent Grimm replied on September 12, 1952, as follows:

"Yours, September 10, claiming time for James Smith, David Leach and Ray Nichols, because they were not called for work on September 3.

often if necessary for the purpose of making such necessary adjustments.

Will you please give our proposal your consideration and advise when we may discuss same with you.

Very truly yours,

/s/ E. J. Hoffman"

Thus, the General Chairman's letter contained a series of proposals for the establishment and operation of extra lists or boards at the freight platforms at Second and Smith Streets in Cincinnati.

One of the proposals, listed as No. 6, stated that, "Senior available employe will be first out for the service. Upon completion of service he will again resume his place on the extra list subject to call in seniority order. Employes exercising seniority to positions on this extra list will take their place on the list in seniority order."

The Carrier submits that the very introduction of a proposed rule dealing with the subject of "calling" the senior available employes "in seniority order" gives inescapable evidence of the absence of any supporting rule or existing practice requiring the Carrier to give such senior employes such a "call".

Actually, the Carrier asserts that neither the proposal listed as No. 6 nor the balance of the proposals were adopted by the parties.

In effect and in fact the Carrier asserts that there is nothing in Rule 9 of the Contract or in any other rule appearing in the Agreement that requires the Carrier to give such extra employes a "call" or "calls". There is no "call" rule as such appearing in the agreement applicable to such extra employes at the Smith Street Freight House. The Carrier asserts a standing and established practice of many years duration that such extra employes will not be given such "call" or "calls".

In view of the above the Carrier asserts that the claim made here at all its parts is essentially without merit and respectfully requests this Division to deny it.

In accordance with the requirements contained in this Division's Circular 1 issued October 10, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to, or is known by, the other party to this dispute.

**OPINION OF BOARD:** This is a claim by senior extra men account work given to junior extra men and alleged to be in violation of Rule 9(e) which reads:

"When it is necessary to start additional forces after the usual starting time, every reasonable effort will be made to give this work to the senior extra men."

The work in dispute was extra platform work at the Smith Street Freight House in Cincinnati where the starting times of the regular forces were 6:00 A. M., 7:00 A. M. and 8:00 A. M. The time slip submitted on behalf of the named Claimants covered the hours 7:00 A. M. to 4:00 P. M. which was the time worked by the junior men.

On September 3, 1952 none of the Claimants reported for work and the Carrier simply used the junior extra men who had, on their own motion, reported for work. It thus appears without contradiction that the Carrier made no effort, reasonable or otherwise, to give this work to the senior extra men. The Carrier made no such effort in reliance upon an established

practice at this freight house of using any extra men who reported in the order of their seniority. However, on September 1, 1952 the Carrier was advised that claims would thereafter be presented for runarounds under Rule 9 (e) upon the ground that the practice was not in conformity with the Rule.

The pertinent portion of the Rule above quoted was in Rule 11 from 1933 to 1947 when, by Mediation Agreement, it was carried into Rule 9 (now Rule 10) and a new Section 37 (h) was added which read:

“(h) Rules governing the manner of working extra forces where employed will be established in writing by agreement between the proper local officer of the railroad and Division Chairman, subject to approval by the parties signatory hereto.”

It is admitted that at some freight houses (Chicago and East St. Louis) the practice of calling extra men is in effect but that at other freight houses (such as this one at Cincinnati) it has been the practice to use in their seniority order only the extra men who report.

**First.** It is true that the Rule does not expressly require calls, but it is equally true that the Rule does not expressly require extra men to report as a condition of being used. And since the Rule expressly puts the burden of making “every reasonable effort” upon the Carrier, to imply an obligation to give a call would not be inconsistent with the Rule whereas to imply an obligation by the extra men to report would be (see Award 1070). Whatever the case may be with respect to the nature and extent of the “effort” required by the Rule, there is no uncertainty or ambiguity about the fact that the Rule requires ~~some~~ effort and it stands admitted here that the Carrier made none.

It follows that a violation of Rule 9 (e) is established. In this view, evidence of practice cannot abrogate the Rule, although it may bar past violations. Either party may at any time require that the practice be stopped and the Rule applied according to its terms (Awards 5872, 5979 and 6144); and this the Organization did on September 1, 1952.

**Second.** The Organization made a proposal on August 12, 1952 pursuant to Rule 37 (h) outlining a series of rules governing the manner of working extra forces, among which was a requirement for the establishment of an extra board and for calls. The Carrier asserts that this proposal is “inescapable evidence” that Rule 9 (e) does not support the claim.

Such a proposal may amount to an admission that the end sought can be achieved only by a rule change; or it may amount simply to a desire for clarification. The proposal made by the Organization here opened with a clear statement that the parties were in disagreement over the interpretation of Rule 9 (e).

In these circumstances we are unable to view the proposal as an admission by the Organization that the interpretation of Rule 9 (e) asserted by the Carrier was correct.

**Third.** The Claim embraces three named claimants and a specific date. It also embraces “other senior employees . . . on the freight platform at Cincinnati” and “subsequent dates.”

This Board has sometimes sustained and sometimes denied general claims mainly for the reasons stated in Award 4821.

General claims have been denied when they are so broad and indefinite that the claimants cannot be readily ascertained or when the relief asked does not operate uniformly upon the members of the class (Awards 1629, 2125, 4372, 5150, 5357, 5384 and 5562). Here, however, the relief asked

operates uniformly upon a readily ascertainable class of senior extra employes at a specific freight platform in Cincinnati.

General claims have also been denied when only a named claimant or specific claim was dealt with on the property and the claim was sought to be enlarged or expanded when it reached this Board (Award 5116). Here, however, the Claim in its present form is the identical claim presented on the property. The Carrier's own correspondence shows at most an assertion that the general portions of the claim had "never been developed, discussed or reviewed in any detail in conference on this property" (emphasis ours). The Carrier's contention that the Claim as presented was not handled on the property is without merit.

**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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1955.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**Interpretation No. 1 to Award No. 7195,**

**Docket No. CL-7154**

**NAME OF ORGANIZATION:** Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

**NAME OF CARRIER:** The Baltimore and Ohio Railroad Company.

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

A check of the Carrier's records to determine the specific senior extra men entitled to runaround payments under the award discloses: first, a group of senior extra men, otherwise entitled to the runaround payments under the award, who had not registered their telephone numbers with the Carrier or else had given no specific advice to the Carrier as to their whereabouts so that they could have been reached on the dates under claim; and second, a group of senior extra men, who had not only registered their telephone numbers with the Carrier but had also given specific advice as to where they could be reached by telephone on the dates under claim.

The Carrier questions its liability under the award for runaround payments to the first group of senior extra men who did not take the initiative, as the second group did, in affirmatively communicating their availability to the Carrier.

It does not appear that the second group of senior extra men, who communicated their availability to the Carrier, did so as the result of any notice, requirement or effort on the part of the Carrier. Nor does it appear that the Carrier made any effort to use the group of senior extra men, who had registered their telephone numbers, in preference to junior men who actually reported for work.

Thus, if a system of registering telephone numbers satisfies the Rule, the fact remains that the Carrier not only left the initiative to the men but also never made any effort to put such a system into effect.

Rule 9 (e), as the award declares, puts the initial burden of making "every reasonable effort" to give the work in question to senior extra men upon the Carrier. The Carrier does not satisfy the Rule by shifting this burden to the men.

It follows that the rights created by the award in favor of senior extra men are not affected by the question whether they communicated their availability to the Carrier or not.

Referee Hubert Wyckoff, who sat with the Division as a member when Award No. 7195 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1957.