

Award No. 7313

Docket No. CL-7286

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly the Scope, Baggage Department, Pennsylvania Station, New York, N. Y., New York Division, when employes of various newspaper companies, called "Expeditors" are permitted to perform work accruing to Station Baggage men.

(b) Certain named claimants, Station Baggage men, be allowed a day's pay daily except Sunday, from February 14, 1952, until adjusted. (Docket N-348)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the claimants in this case hold a position and the Pennsylvania Railroad Company — hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station, and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Pennsylvania Station, New York, N. Y., is located on the Carrier's New York Division. Employes of the Baggage Department in that station classified as Station Baggage men have seniority rights over the entire New York Division in Group 2. One of the primary duties of these employes is the handling, unloading, loading, and sorting of newspapers shipped in baggage service by the various publishers of New York newspapers. In order to meet both press deadlines and train departure times there is frequently a limited amount of time from the time the newspapers are delivered to the Pennsylvania Station

these circumstances he likewise would not be entitled to the compensation which he claims on or after August 10, 1954.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the work here in dispute does not accrue exclusively to Station Baggage men coming under the Scope of the Clerical Agreement, and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The record sets out in detail the method by which newspaper expeditors are used in the Pennsylvania Station, New York, N. Y., and it also shows that this method of expediting newspaper delivery to trains has been in existence since 1910 at this station. However, the one conflict in the facts presented is to the extent this practice is permitted. Apparently there can be no objection to the newspaper publishers using their own delivery trucks and when these trucks arrive at the station the placing of newspapers in bundles on the tailboard for unloading is proper, however, after this is done a conflict in facts presented appears. Stated in one way it appears that expeditors, when time is pressing, load trucks which are moved directly to train platforms for loading into the baggage cars of passenger trains, or, it is then stated are placed at the assorting platform for subsequent classification, delivery and loading into baggage cars. Likewise in the record it is also set out (P. 19):

"* * * these 'expeditors' voluntarily assist the Carrier's Station Baggage men, * * *, in the work of (1) unloading the newspapers from the tailboard of the truck, (2) moving the newspapers by skid to the train platform, (3) sorting newspapers, and (4) loading newspapers into the baggage car. * * *"

We recognize the theory of past practice, so well covered in the previous awards of this Division, and its application, however, such practice must be

definitely set out in the records on which such findings are based. Here, it seems there should be a line of demarcation as to the extent to which these "expeditors" can be used in order that they do not interfere with the routine duties of the craft regularly performing the work of loading baggage cars. An abuse of such a right or privilege as given to newspaper companies here by a continuing expansion of such activities on the part of these expeditors would result in serious consequences to the craft given this work by the collective bargaining agreement. Therefore, to repeat, the conflicts in the evidence presented in the record should be clarified so that we would definitely know the extent to which this practice has gone.

In view of this we feel that this case should be remanded. We note that Carrier suggested on two occasions that a conference be held to reach some agreement in the dispute which suggestion was rejected by the Organization. This could be the solution, however, that is not a matter for our determination.

We do think that an investigation may show definitely the extent to which this practice has gone and that by having definite information on the subject a line of demarcation can be determined as to the extent this practice should be carried on.

Therefore, as stated, we remand this claim for further consideration on the property.

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 claims are remanded in accordance with Opinion.

AWARD

Claims remanded for further consideration on the property.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1956.