

Award No. 9518

Docket No. CL-9207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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, except as amended, particularly Rules 3-A-1 and 4-A-1 (i), when work that was required to be performed on a holiday that was not a part of any assignment, was assigned to junior employees in the Baggage Department, Pennsylvania Station, New York, New York, former New York Division.

b. Edward Wilbur and twelve other named Claimants should each be allowed four hours pay, at the punitive rate, for Thursday, November 25, 1954, the Thanksgiving Day holiday, because of this violation.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case hold positions 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, except as amended, covering Clerical, Other Office, Station and Storehouse Employees 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.

All of the thirteen named Claimants in this case are regularly assigned Baggage men at Pennsylvania Station, New York, New York, former New York Division, and have seniority dates on the Seniority Roster of the New York Region in Group 2.

On November 23, 1954, Mr. C. L. Allen, Baggage Agent at Pennsylvania Station, issued a notice that extra work would be available for Station Bag-

Moreover, the Carrier desires to reiterate that even if the Employees claim were to be sustained on the basis that the twelve (12) senior men should have been retained on duty to perform the work at issue, only eight (8) of the thirteen (13) Claimants would have been entitled to participate in such work. Furthermore, three (3) of these eight (8) senior Claimants have already been compensated for the time lost at the pro rata rate and they would not be entitled to any further compensation.

Thus, even if the Employees' claim were to be sustained, only five of the named Claimants would be entitled to be compensated for either three hours and forty-five minutes or four hours, depending on the time worked on the date in question, at the pro rata rate of pay.

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 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 thereto. To grant the claim of the Employees 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 this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the Claimants were not entitled under either the past practice or the Agreement to be used for the work in question; that they are not entitled to the additional compensation which they claim; and that the claim here before your Honorable Board should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

(Exhibits not reproduced)

OPINION OF BOARD: The Record herein reflects that there was an understanding between the Parties for use of position seniority for assignment of overtime work on holidays, preference being given to the senior employee at assigned locations. The Record also shows that as of the time of the holiday involved here (Thanksgiving Day, November 25, 1954) said understanding had not been terminated. The Carrier having complied with the understanding on the date in question, the claim 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 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 4th day of August, 1960.