Award No. 9838
Docket No. CL-9233

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, 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, as well as an understanding and/or agreement, when it failed to properly notify all employes working on Table "B" in the Baggage Room, Pennsylvania Station, New York, New York Division, that overtime was available on August 4, 1955.

(b) R. V. Petersen and Elias Pukas, Extra Baggagemen, assigned to Table "B", Baggage Room, Pennsylvania Station, New York, be compensated a day's pay at time and one-half for August 4, 1955, as a penalty. (Docket No. 53.)

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 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 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.

Claimants R. V. Petersen and Elias Pukas, Extra Baggagemen in the Baggage Department, Pennsylvania Station, New York, N. Y., were assigned

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 Employes 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 had no demand right under the Agreement to be used for the work in question; that they either were notified of the availability of the overtime work but did not desire to participate or were not available for the work; 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 Employes, 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.

All data contained herein have been presented to the Employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were on an Extra List established by the Agreement Rule 5-C-1 at Carrier's Baggage Department, Pennsylvania Station, New York City, and on August 3, 1955, worked on the 11:59 P. M. to 7:59 A. M. third shift at Table B.

Thursday, August 4, was pay day, third trick employes were permitted to cash their pay checks during regular working hours at the Cashier's window, and at 7:42 A. M. the two named claimants left Table B for this purpose. They did not return and later stated that they did not get their checks cashed until 8:12 and 8:13 or 30 to 31 minutes after leaving the location of their work.

At 7:25 A. M., because of temporary increase in the volume of work it was decided to work all the third shift employes overtime. Claimants' foreman was not notified of this until after the claimants had left at 7:42 A. M. and since they did not return after cashing their checks, the foreman could not inform them; however, the foreman stationed at the pay window was advised shortly after 7:25 A. M. and announced it to those at the window until he left there at 8:00 A. M., which was 12 or 13 minutes before claimants say they cashed their checks.

As this baggage facility is of tremendous size, and even extends to the basement of the Post Office across the street, telephones and the public address system were used, though the latter does not reach the work locations in the Post Office basement of which Table B is one.

The two claimants state they were not advised of the overtime work. They were junior to all third trick employes at Table B and no other employes were used to work the overtime which was concededly available for the claimants.

The Carrier reminds us that the Claimants have the burden to prove their case (which needs no authority) and assert that they have not shown any right in themselves or duty upon the Carrier re notification of overtime work.

In their submission to this Board, filed October 15, 1956, the claimants allege that Carrier violated the Agreement "* * * as well as an understanding and/or agreement" when it failed to notify, etc., and quotes from letter of Carrier dated June 14, 1956, written as the "Manager Labor Relations' final denial" as follows:

> "At 7:25 A. M. the Contact Clerk informed Foreman Lubera that overtime was available at all locations and the foreman so informed the men in line. This is the standard procedure at this location and Foreman Lubera is stationed at the Cashier's window every payday morning in anticipation of need for filling vacancies due to absenteeism."

This "Standard Procedure" is then referred to twice in the claimants' submission, and Exhibit A, the joint submission to Manager—Labor Relations contains the statement that "the claimants should have been afforded an opportunity to work overtime in accordance with their seniority rights."

In the same Joint Submission while on the property, page 2 thereof, appears (signed for Carrier by S. J. Wilson, Superintendent Personnel) the following:

> "The Claimants were assigned to Table B, location, Baggage Dept. Pennsylvania Station, NY. Overtime in this department is distributed on a location seniority basis."

The ex parte submission of Carrier, says:

> "It has been the practice for a number of years when distributing overtime work in the Baggage Department to offer such overtime work in seniority order to the employes assigned to the location where the overtime exists. On August 4, 1955, no employe junior to either of the claimants worked overtime at the Table B location."

In substance the above paragraph is repeated a few pages later in the same submission and again in Carrier's oral argument.

From the above by evidence from Claimants and also admissions of Carrier it appears that a practice existed for years in which seniority was recognized on location, or at the table, rather than in the entire baggage department as a whole. See Award 9518 (Elkouri, August, 1960) in which Carrier asserts the same "verbal local" or "local verbal" understanding between the Organization and the Carrier for overtime on holidays and other days, and such was found by the Board to apply to work on holidays, the only question therein submitted.

It follows that if such an agreement is in existence then Carrier must respect seniority (as indeed it has done) and while not a guarantor it does

have the obligation to use reasonable diligence to see that employes are notified when overtime is available. Awards 4200, 4841, 6474, 4467, 6756 and 6831. This is true even though Claimants were the two juniors on the table because the work would have gone to them, so the Carrier says, had they been there.

However, after reviewing the entire record we are of the opinion that Carrier in following the standard procedure referred to, and otherwise, did all that could reasonably be expected toward notifying the Claimants, considering the difficulties involved and the limited time in which to act.

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 there was no violation of the agreement by Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1961.