

Award No. 10634

Docket No. CL-9847

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

THE DENVER UNION TERMINAL RAILWAY COMPANY

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

(1) The terms of the current Agreement were violated on October 16, 1956, when employees in Seniority District No. 3 were required to suspend their regular work to perform janitorial duties belonging to employees in Seniority District No. 5.

(2) That Messrs. F. Gonzales, Edwin M. Rohde, I. L. Boe, Gordon M. Thomas, Wallace Canfield and Harold Hill each be paid an additional one hour and fifteen minutes for janitorial work performed by them.

(3) That senior available employee in Seniority District No. 5, Mr. William Cotton, be paid seven hours and thirty minutes because of employees from another district performing janitorial work.

EMPLOYEES' STATEMENT OF FACTS: On October 16, 1956, employees regularly assigned as truckman in Seniority District No. 3 were required to suspend performance of truckmen duties, i.e., loading and unloading trains and handling mail and baggage to and from trains, to perform janitorial work, i.e., sweeping and cleaning of mail room.

Shortly after current contract effective January 1, 1954 was signed, Mr. L. J. Ampleman, Local Chairman registered a complaint with Mr. E. F. McKinnon, Baggage Agent, concerning the use of mail and baggage employees holding rights in Seniority District No. 3 to perform janitorial work. After conference between Mr. McKinnon and Mr. Ampleman the carrier representative agreed that janitors would perform janitorial work in the future. From 1954 to August 1956 the Organization received no complaints concerning baggage room employees being required to perform janitorial work.

On August 13, 1956, Local Chairman Ampleman again received complaints concerning baggage room employees performing janitorial work and he directed a communication to Mr. McKinnon reading as follows:

The rosters will be revised and posted in January of each year and will be open to protest for a period of ninety (90) days from date of posting and upon presentation of proof of error by an employe, or his representative, such error will be corrected. The General Chairman and the Local Chairman will be furnished with a copy of the rosters.

(b) The provision for annual revision and posting of seniority rosters will not be construed to mean that the duly accredited representatives of the employes will be denied the right to request and receive revised rosters when reductions in force are contemplated or when, due to turn-over in forces, the annual rosters do not furnish the information necessary to apply properly the provisions of this agreement.

(c) Effective with the posting of the January 1954 seniority rosters, protests on seniority dates for correction or for addition or deletion of names will be confined to names added since posting the previous annual rosters. Seniority dates of all employes shown on the January 1954 seniority rosters will be considered as permanently established, except as may be corrected as a result of protest filed within the ninety (90) day period after posting of said rosters and the names of employes with seniority dates prior to January 1, 1954, will not be added to or deleted from subsequent rosters except by approval of the Management and the General Chairman.

contain any provision whatsoever granting the exclusive right to employes in Seniority District No. 5 to the work of sweeping and cleaning. Moreover, Carrier holds that Rules 3, 5, and 6 above quoted only describe the establishment and retention of seniority, seniority districts, and seniority rosters of employes governed by the agreement and do not attempt to describe the work which is covered by the agreement or the work to be performed.

Carrier holds that since the first working agreement negotiated with the Clerks' Organization, the employes in Seniority District No. 5 have never been used to sweep and clean in the area complained of and no complaint was received with respect thereto. When the current agreement was negotiated effective January 1, 1954, no request was made on the carrier to change the practice which had been in existence over 30 years, and the practice complained of is still in effect.

The Carrier asserts the claim, which must be denied, is not supported by the rules.

All data in support of Carrier's position have been presented to the employes and made a part of the question in dispute. Carrier reserves the right to answer any data not hereto submitted to it by the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 16, 1956 employes regularly assigned as truckmen in Seniority District No. 3 swept and cleaned the "mail room". While some uncertainty developed at first as to exactly what physical location was involved, this apparently was the area described by Carrier as the "mail room concourse", where truckmen loaded and unloaded trains and handled mail and baggage to and from trains. Petitioner maintained sweeping and cleaning services in and around the station constituted janitorial duties belonging to employes in Seniority District No. 5, and charged violation of

Rules 5, 6 and 3(c) of the Agreement between the parties effective January 1, 1954. Carrier maintained no named rule was violated; employees in Seniority District No. 5 never cleaned the "mail room concourse" _____ area other than that within the main building proper; employees in Seniority District No. 3 had performed this work for 30 years or more; and Rules 5, 6 and 3(c) only concerned the establishment and retention of seniority, seniority districts and rosters, but did not purport to describe work covered by the Agreement or work to be performed.

Rule 5 — Seniority Districts — provided in pertinent part:

"The following seniority districts are hereby established over which employees covered by seniority rosters, of each respective seniority district, as defined in Rule 6 may exercise their seniority. Seniority districts so established shall be continued unless and until changed by mutual agreement between the management and the duly accredited representatives of the employees:

"Seniority District No. 3 — District No. 3 shall include all employees and/or classifications in the following departments or sub-departments baggage and mail, including consolidated office, baggage room, parcel and check room, cream department, railroad mail room, and mail department.

"Seniority District No. 5 — District No. 5 shall include all employees and/or classifications of: Porters, Janitors, Janitresses, Matrons and Elevator Operators."

Rule 6 — Seniority Rosters — provided in pertinent part:

"(a) Seniority rosters showing name, occupation, location and seniority date of all employees will be posted in agreed upon places accessible to all employees affected. . . . The following rosters will be established:

"Roster No. 3 — Baggage and mail departments, including consolidated office, baggage room, parcel and check room, cream department, railroad mail room, mail department, and baggage and mail watchmen.

"Roster No. 5 — Porters, janitors, janitresses, matrons, and elevator operators."

Rule 3(c) was as follows:

"(c) Seniority rights of employees to vacancies or new positions or to perform work covered by this agreement will be governed by these rules."

Petitioner pointed out that a truckman position, or any position in the baggage room, had never been bulletined with janitorial work assigned thereto, but that March 29, 1956 bulletin as to job assignments and work assigned to janitors contained the following for Job No. 3: "... clean baggage room, wash windows baggage room . . .", and the following for Job No. 9: "... clean baggage room up and down office . . ." These, Carrier asserted, referred to the baggage room, not the "mail room concourse", for which cleaning had never been shown on any bulletin on which janitorial jobs had been listed.

Petitioner asserted that shortly after the current agreement became effective a complaint was registered concerning the use of mail and baggage employees to perform janitorial work; that it was agreed that janitors would perform this work in the future; and that the use of employees in Seniority District No. 3 for this work was discontinued until August 1956. Petitioner also asserted that it again received similar complaints on August 13, 1956; that it wrote to the Carrier's Baggage Agent stating it would file time claims upon any recurrence; and that it received no response. Carrier declared that Petitioner's former assertion was in error and that mail employees were used exclusively to clean the area in question. Carrier stated as to Petitioner's latter assertion, that the parties were then in mediation sessions.

Petitioner also relied upon Rule 71 — Date Effective and Changes — which provided in pertinent part as follows:

"This agreement shall be effective January 1, 1954, superseding all prior rules, agreements and understandings in conflict herewith and shall continue in effect until changed as provided herein or in accordance with the Railway Labor Act, as amended."

The Board considers the claim to be without merit. Scope Rule 1 named employees "truckmen" and "janitors". Of the rules involved here concerning seniority, Rule 5 placed in Seniority District No. 3 "all employees and/or classifications" in the baggage and mail department; and in Seniority District No. 5 "all employees and/or classifications of: Porters, Janitors", etc., without specifying, either broadly or narrowly, the physical confines for performance of the latter employees' functions. Rule 6 was cast in similar manner. The bulletins and history of previous complaints are inconclusive. At the same time, the record discloses that sweeping and cleaning of the area in question had been assigned to truckmen to perform, as an incidental duty along with their primary job, for 30 years or more. These rules, which seem susceptible to construction, neither by express terms nor by fair implication terminated the long-observed practice. Consistently, Rule 71 too did not terminate the practice, for the Agreement, so construed, did not conflict with it. (Award 8538) Thus resolved, this dispute does not fall within the operation of the principles that a carrier may not unilaterally transfer duties from one seniority district to another (Award 3656, 4076 and 5413) or that past practice does not alter an unambiguous rule (Award 5166).

The Board therefore concludes that the claim should be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of May 1962.