

Award No. 11151
Docket No. CL-10626

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, 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 Rule 5-C-1 and Extra List Agreement No. 6, at Fort Wayne, Indiana, Northwestern Region, when it used a regular Baggage and Mail Handler to fill a vacancy of Train Rider instead of using the first out, available Group 2 Extra List employe.

(b) Group 2 Extra List employe, B. R. Hill, should be allowed eight hours' pay for October 21, 1956. (Docket 203)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the class or craft of employes in which the Claimant in this case held 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, 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.

The Claimant in this case, B. R. Hill, is assigned to the Group 2 Extra List at Fort Wayne, Indiana, Northwestern Region. He has a seniority date on the seniority roster of the Northwestern Region in Group 2.

There is a regular position of Train Rider, Position No. 33, which has headquarters at Fort Wayne, Indiana. The incumbent of this position is

(Exhibits not reproduced.)

OPINION OF BOARD: The docket here shows that on October 21, 1956, Position No. 33, Train Rider, was vacant at Fort Wayne, Indiana. Such position requires that employes report for duty for such position at 3:15 A. M. with departure on Train No. 44, at 4:07 A. M. An extra employe holding first out position on Group 2 Extra List, was called to fill the vacant position of Train Rider No. 44. It appears that the extra employe called for this assignment failed to report for duty on the vacant position, leaving the Claimant herein named, next first out, on the extra list.

Carrier takes the position that by reason of the failure of the Extra employe, failing to report as Train Rider, it did require E. E. Meyers, on duty at Fort Wayne Station, as a regular assigned Baggage and Mail Handler, to take vacant position of Train Rider, removing him from his regular assigned position, blanked his position for three hours, between 4:00 A. M. to 7:00 A. M. The regular assignment of the Baggage and Mail Handler position was from 11:00 P. M. to 7:00 A. M., and that such action by Carrier, in no way violated the provisions of the Agreement between the parties.

No effort was made by Carrier to call the Claimant, who stood first out on the Extra List, to fill the vacancy as Train Rider on Train No. 44, nor was he called to fill the vacancy for three hours on the position of Baggage and Mail Handler, when the regular employe was required to go out as Train Rider on Train No. 44. For such action by Carrier, claim is made for eight hours pay for failure to call the Claimant, as provided by Agreement No. 6, covering Extra List for Group 2 employes, and effective March 1, 1955.

Carrier contends that it was not prohibited from using a regular employe to fill a vacancy, such as occurred here. That nothing is contained in Rule 5-C-1 or the provisions of Extra List Agreement No. 6, which restricts Carrier from using regular assigned employes in filling vacancies. Carrier further contends that when the employe standing first out on the Extra List, failed to report for duty as Train Rider on Train No. 44, at 3:15 A. M., that this brought about an emergency condition, and that Carrier under such circumstances was within its rights in using a regular assigned employe.

The Board finds that when the first man called to fill the vacancy, failed to report for duty at 3:15 A. M. it was incumbent upon Carrier and its Foreman, to call the Claimant, who was first out on the Extra List, at 3:15 A. M., and that by its failure, if an emergency was created, it was due to failure of the Foreman, to call this Claimant, who was first out, next available man on Extra List No. 6. Carrier relied on the provisions of the Extra List Agreement in calling the first man out, but who failed to report for his assignment, Carrier had ample opportunity to call the Claimant, but the record shows the Foreman, made no effort after 3:15 A. M., to call Claimant, but as indicated in the Record, until about 4:00 A. M., realizing he had no Train Rider to go out on Train No. 44, at 4:07 A. M., he required a regular assigned employe to fill the Train Rider vacancy, as is shown that the regular assigned employes position was blanked at 4:00 A. M.

We find that if any emergency existed here, that such emergency was brought about by failure of the Foreman to call this Claimant within a few minutes after 3:15 A. M., who was available for service.

Carrier did violate the provisions of Extra List Agreement No. 6, as alleged.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Carrier did not comply with the requirements of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.