

Award No. 12220
Docket No. CL-11735

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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:

CASE NO. 1

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-C-2, when it abolished the positions of Station Baggage men William Langrell and Edward Bednarik, at the Akron and Hudson, Ohio Stations, Lake Region, effective December 13, 1957.

(b) The positions should be restored in order to terminate this claim and that William Langrell and Edward Bednarik, and all other persons affected by the abolishment of these positions be restored to their former status (including vacations) and be compensated for any monetary loss sustained by working at a lesser rate of pay; be compensated for any loss sustained under Rule 4-A-1 and 4-C-1; be compensated in accordance with Rule 4-A-2 (a) and (b) for work performed on holidays, or for holiday pay lost, or on the rest days of their former positions; be compensated in accordance with Rule 4-A-3 if their working days were reduced below the guarantee provided in this rule; be compensated in accordance with Rule 4-A-6 for all work performed in between the tour of duty of their former position; be reimbursed for all expense sustained in accordance with Rule 4-G-1 (b); that the total loss sustained, including expenses, under this claim be ascertained jointly by the parties at time of settlement (Award 7287); the period of claim is December 13, 1957, and all subsequent dates until the violations are corrected. [Docket 431]

CASE NO. 2

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-5, when it used Extra Freight Truckers from Akron, Ohio Freight Station, as Station Bag-

gagemen at Hudson, Ohio Station, Lake Region, on regularly scheduled four hour calls, each day, following the abolishment of two regular positions of Station Baggage-man, effective December 13, 1957.

(b) Claimant Eugene Williams, Extra Freight Trucker, and all other extra employes who may have worked any of the regularly scheduled four hour calls, should be allowed an additional four hours each, for each call worked, at the pro rata rate of Station Baggage-man, for December 13, 1957, and all subsequent dates, seven days a week, until the violation is corrected. [Docket 435]

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 held 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.

CASE NO. 1 [Docket 431]

Prior to December 13, 1957, Claimants William Langrell and Edward Bednarik were the incumbents of regular positions of Station Baggage-men at the Akron and Hudson, Ohio Stations, Lake Region. They each have seniority dates on the Lake Region seniority roster in Group 2.

Claimant William Langrell, prior to December 13, 1957, was the incumbent of a regular position of Station Baggage-man, Akron, Ohio Freight Station, tour of duty 1:00 P. M. to 9:00 P. M., including a one-hour meal period, rate of pay \$370.97 a month. The Claimant worked at Akron Freight Station as a Trucker, from 1:00 P. M. until 4:30 P. M., at which time he departed for Hudson, Ohio Passenger Station, approximately fourteen miles distant, where he worked as Station Baggage-man until the departure of Passenger Train No. 38, at 8:35 P. M. He then returned to Akron to complete his tour of duty at 9:00 P. M.

Prior to December 13, 1957, Claimant Edward Bednarik was the incumbent of a regular position of Station Baggage-man, Akron Freight Station, tour of duty 6:00 A. M. to 3:00 P. M., including a one-hour meal period, rate of pay \$370.97 a month. Mr. Bednarik reported for duty at Hudson Passenger Station at 6:00 A. M., to handle the baggage and mail on Passenger Trains 39 and 339, at 8:02 A. M., and 8:15 A. M., respectively. Following this service he reported at Akron Freight Station at 10:00 A. M., where he worked as a Trucker for the remaining portion of his tour of duty.

Effective December 13, 1957, the positions of Station Baggage-man held by each of the Claimants were abolished, and the remaining work of the abolished positions that remained to be performed at Hudson, Ohio, was performed by Extra Freight Truckers, who were sent there from Akron, Ohio, daily, on regularly scheduled four-hour calls, to perform this work.

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 Agreements 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 and 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 of the Employees in this case would require the Board to disregard the Agreements between the parties thereto 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 work of the abolished Baggage men positions was not assigned in violation of the Master 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 claims of the Employees in this matter.

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 record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute involves two claims originating out of the same cycle of circumstances. On December 13, 1957, Carrier abolished two Baggage man positions at the Hudson Passenger Station, Hudson, Ohio. The employees who had been assigned to those positions worked from 6:00 A. M. to 3:00 P. M., and from 1:00 P. M. to 9:00 P. M., respectively. The same employees who had worked as Baggage men at the Hudson Passenger Station also worked, during their regular assigned hours above mentioned, as Trucker-Baggage men at the Akron Freight Station, Akron, Ohio. The distance between the Akron Freight Station and the Hudson Passenger Station is fourteen miles.

Concurrently with the abolishment of the two Baggage man positions at the Hudson Passenger Station, Carrier assigned two Extra Truckers from the Akron Freight Station to perform baggage work at the Hudson Passenger Station. One of these Extra Truckers was assigned to work at Hudson from:

7:45 A. M. to 11:00 A. M. Monday through Friday

8:00 P. M. to 9:00 P. M. Monday, Tuesday, Wednesday,
Thursday and Sunday.

The other Extra Trucker was scheduled to work at Hudson from:

7:45 A. M. to 11:00 A. M. Saturday and Sunday

8:00 P. M. to 9:00 P. M. Friday and Saturday

Carrier paid each Extra Trucker on a four hour call basis as provided in the Agreement.

Petitioner's first claim is in behalf of the former incumbents of the abolished positions based on the alleged violation of Rule 3-C-2 of the Agreement. The second claim is in behalf of the Extra Trucker from Akron Freight Station on the alleged violation of Rule 2-A-5 of the Agreement.

All of the above is more particularly set out in Joint Statements of Agreed Upon Facts which was executed on the property and which appears in the record. The Statement with respect to the first claim reads:

"Claimant Edward Bednarik held position of Station Baggage-man, Akron Freight Station, tour 6:00 A. M. to 3:00 P. M., and was assigned to perform service at Hudson Passenger Station at start of tour of duty in order to handle baggage on trains 39 and 339 which arrived at 8:02 A. M. and 8:15 A. M., respectively, and after returning to Akron Freight Station at 10:00 A. M., was assigned to perform Trucker duties for the remainder of tour of duty.

Claimant William Langrell held position of Station Baggage-man, Akron Freight Station, tour 1:00 P. M. to 9:00 P. M., and performed Trucker duties at Akron Freight Station until 4:30 P. M., when he departed for Hudson Passenger Station to handle baggage on Train 38, which arrived at Hudson Passenger Station at 8:35 P. M., completing his tour of duty at 9:00 P. M.

Effective December 13, 1957, both positions of Station Baggage-man held by claimants were abolished, and Extra Truckers are regularly used twice daily on a 4-hour call basis to perform service at Hudson Passenger Station."

The Statement with respect to the second claim reads:

"Claimant Eugene Williams held position of Extra Trucker at Akron Freight Station.

Prior to December 13, 1957, a position of Station Baggage-man, tour 6:00 A. M. to 3:00 P. M., Akron Freight Station, was assigned to perform service at Hudson Passenger Station at start of tour of duty to handle baggage on Trains 39 and 339 which arrived at 8:02 A. M. and 8:15 A. M., respectively, and after returning to Akron Freight Station at 10:00 A. M., was assigned to perform Trucker duties for the remainder of tour of duty. Another position of Station Baggage-man, tour 1:00 P. M. to 9:00 P. M. performed Trucker duties at Akron Freight Station until 4:30 P. M., when the incumbent of the position would depart for Hudson Passenger Station to handle baggage on Train 38, which arrived at Hudson Passenger Station at 8:35 P. M., completing his tour of duty at 9:00 P. M.

Effective December 13, 1957, both positions of Station Baggage-man were abolished, and the work formerly performed by the Station Baggage-men at Hudson Passenger Station was subsequently performed by two extra Truckers from Akron Freight Station, one of whom was the claimant.

Claimant is called on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays for the morning work, i.e., 7:45 A. M. to 11:00 A. M.,

as well as the evening call, i.e., 8:00 P.M. to 9:00 P.M. on Mondays, Tuesdays, Wednesdays, Thursdays and Sundays, and is compensated on a 4-hour call basis for each time used to perform service in accordance with the provisions of Rule 4-A-6 (d). The other extra Trucker is called to perform the morning work on Saturdays and Sundays, and the evening work on Fridays and Saturdays."

Carrier has the right to abolish positions. Petitioner does not dispute the fact that baggage and trucking work had been progressively declining. These facts are fully set out in the record. It is also a fact that the trucking work which Claimants in Case No. 1 performed as truckers at the Akron Freight Station was assigned to the remaining force of truckers at the Akron Freight Station. Petitioner argues only that Carrier violated Rule 3-C-2 of the Agreement. This Rule provides, in part, as follows:

"(a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employe, provided that less than four hours' work per day of the abolished position or positions remains to be performed; and further provided that such work is incident to the duties of an Agent, Yard Master, Foreman, or other supervisory employe."

Prior to December 13, 1957, the assigned work force at the Hudson Passenger Station consisted only of an Agent. At Akron Freight Station, the assigned platform force consisted of one Tallyman, two Truckers, and two Trucker-Baggage-man positions. The latter two, in their capacity as Baggage-men, also worked at the Hudson Passenger Station. When the two Baggage-man positions were abolished, the trucking work formerly done by Claimants at Akron was assigned to other employees at the Akron Freight Station in accordance with the provisions of Rule 3-C-2.

There was only an Agent in the Hudson Passenger Station. Rule 3-C-2 says that when a position is abolished and less than four hours' work per day of the abolished position remains, then that work "may" be done by an Agent. It does not say that such work "shall" be done by an Agent. The assignment of the work to an Agent is permissive; it is not compulsory. There was no Extra List maintained at the Hudson Passenger Station. Carrier had the option to assign the remaining work at Hudson to the Agent. But, there is nothing in Rule 3-C-2 which obligates Carrier to do so. Carrier did not violate the provisions of Rule 3-C-2. There is no basis for the claim in Case No. 1.

Prior to December 13, 1957, Claimants Bednarik and Langrell worked a total of about 112 hours a week at both the Akron and Hudson Stations. Each worked 8 hours a day, 7 days a week. They worked about 50% of their time or about 28 hours a week each at the Hudson Passenger Station. Thus, there was about 56 hours of Baggage-man work at the Hudson Station.

After their positions were abolished, there was only 29 hours and 45 minutes of Baggage work at Hudson. The involved employees, who work at Akron and Hudson, are in the same seniority district. There was no Extra List at Hudson. There was one at Akron. Prior to the abolishment of the Baggage positions, Truckers from the Extra List at the Akron Freight Station performed Baggage work at the Hudson Passenger Station on Saturdays and Sundays, the rest days of the regular positions. Although the record does not show for what period of time the Akron extra Truckers protected the Baggage work at Hudson, there is no denial by Petitioner that this practice had existed.

There is no question that there was not sufficient work at the Hudson Passenger Station to establish two full-time Baggage positions. The record also shows that there was not enough work to establish one such full-time position.

Carrier offered to establish part-time regular positions at Hudson which Petitioner rejected. The work at Hudson after December 13, 1957, was, therefore, extra work. The use of employees on the Extra List at Akron was consistent with the past practice. There is no merit to the claims in Case No. 2.

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 violate the Agreement.

AWARD

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.