

**Award No. 12366**  
**Docket No. CL-12172**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Bernard J. Seff, 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 (GL-4811) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 5-C-1, and the Group 2 Extra List Agreement dated March 19, 1942, when it unilaterally increased the agreed-upon number of employees assigned to the Extra List by using furloughed employees on a day-to-day basis in the Baggage Department, Pennsylvania Station, New York, New York, New York Region.

(b) Claimant Joseph Tydings and seventy-two other named employees should each be allowed eight hours' pay a day for each day retroactive ninety days from March 29, 1956, to December 29, 1955, and all subsequent dates until the violation is corrected.

(c) Claimant M. J. Dealy, Jr., should be allowed eight hours' pay a day for May 29, 1957, and all subsequent dates until the violation is corrected.

(d) Claimant F. L. Burnett, should be allowed eight hours' pay a day for March 27, 1958, and all subsequent dates until the violation is corrected.

(e) Claimant E. N. Connelly and all other adversely affected employees (who will be designated by the Brotherhood) should be allowed eight hours pay a day for each day retroactive ninety days from March 31, 1958, to December 31, 1957, and all subsequent dates until the violation is corrected.

(f) Claimant J. J. Day, Jr., should be allowed eight hours' pay a day for each day retroactive sixty days from March 31, 1958, to December 31, 1957, and all subsequent dates until the violation is corrected.

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**III. Under The Railway Labor Act, The National Railroad Adjustment Board Is Required To Give Effect To The Said Agreements 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 interpretations 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 Agreements 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 established that there has been no violation of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

**OPINION OF BOARD:** These claims resulted from a dispute between the Carrier and the Organization, involving the interpretation of Rule 5-C-1 of the Agreement when read together with a Memorandum of Agreement which was entered into on March 19, 1942 which established extra lists of extra baggagemen to handle the fluctuating needs of the Carrier in the handling of U. S. mail. The Carrier takes the position that the claims must fail for lack of specificity.

Concretely, the Carrier complains that the claims set forth in paragraphs (b), (c), (d), (e) and (f) wherein the demand for compensation is made for alleged violations said to have occurred on unspecified dates,—viz: for:

"all subsequent dates until the violation is corrected."

makes the claims defective.

The Carrier takes the position that the nature of the violation here being alleged is such as to require considerable factual information in order to determine whether or not such a violation did in fact occur. The burden of proving a violation is upon the employees. (See Award 4011). Absent the offering by the Organization of competent evidence specifying the dates of the alleged violations its claim is vague and indefinite. The Carrier also states that Paragraph (e) of the said claim does not identify "all other adversely affected employees" in whose behalf it is being asserted and thus adds to the

indefinite nature of the claim and prevents the Carrier from interposing certain defenses which might otherwise be available to it.

The Organization replies to these aspects of the Carrier's defenses by relying on Award 12288 (Kane) in which it was held that when a claim is made on behalf of a class of employees the words "all others affected" do not defeat the claim if the Claimants involved are readily identifiable. A number of other Awards are also cited by the Organization, viz: Award 5630 which holds that general claims are only defeated when they are so broad and indefinite that the Claimants cannot be readily ascertained or when the relief asked does not operate uniformly upon members of the class. (Awards 1629, 2125, 1372, 5150 and 5562.)

The Organization takes the further position that the Carrier in effect waived any defect in the phrasing of the claim when it joined with the Organization in the joint statement of facts which concludes with the statement that the claim was presented and progressed in accord with the provisions of the rule. The Board is of the opinion that a conclusionary statement of the above nature is a mere amenity and does not operate as a waiver.

It is significant that the claim in the instant case is vague and indefinite because of its failure to state the dates when the alleged violations took place. The Carrier argues that on some of the dates encompassed by the claim no work was done and no employees were used on such occasions. In this connection, it should be emphasized that the Organization quoted with approval and apparently relies on Award 4821 (Carter). In pertinent part this Award contains the following language:

" \* \* \* But when a claim has been established and the dates of the violations are determined, the Carrier can be required to supply the names or permit a representative of the Organization to search them out." (Emphasis ours.)

Thus the very element stated to be essential in a claim, "the dates of the violations" was not set forth in the instant matter and for this reason the said claim must fail for lack of specificity.

The Organization points to Award 12288 (Kane) involving the same parties wherein it was held, inter alia, as follows:

" \* \* \* We are also of the opinion that the Claimants identified as, 'all others affected', are readily identifiable. The Carrier should have no difficulty identifying the regular employees of the Dining Car Department who worked September 7, 1954 when the day prior was a holiday and their rest day. The amount payable is fixed and certain. The Carrier's only defense appears to be the trouble and expense incurred, in paying the holiday wages. \* \* \* "

It is crystal clear that the facts in the above case, in their essential elements, bear no resemblance to the case at bar. The gravamen of the Carrier's position is that since the days when the alleged violations allegedly took place are not spelled out in the claims the amount payable, if any, is neither fixed nor certain. For this reason, the claims in their present posture, cannot be adjudicated.

**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 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 claims are vague and indefinite.

#### AWARD

The case must be dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.