

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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-4896) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-1, when it established, but failed to bulletin, a position of Station Baggage man in the Baggage Department, Pennsylvania Station, New York, New York, former New York Division, former Eastern Region, and assigned Extra Station Baggage man J. J. Reilly to fill the position on the M-4 Elevator on tour 3, commencing August 15, 1952.

(b) Claimant J. J. Radice should be compensated for all monetary loss sustained commencing September 26, 1952, and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees 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, J. J. Radice, is the incumbent of a regular position of Station Baggage man, Symbol No. 7-12-A-139, tour of duty 11:59 P.M. to

therefore the claim of the Employees as presented to your Honorable Board is wholly without merit.

The Carrier respectfully submits that your Honorable Board should dismiss or deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Mr. J. J. Radice, incumbent of the regular position of Station Baggage man, Symbol 7-12A139, on Platform 4 of the Pennsylvania Station, New York, New York, had seniority on the roster of the New York Region in Group 2. Mr. J. J. Reilly was assigned as an extra station baggage man and regularly was used to fill the position on the M-4 Elevator on tour 3 for the period of August 15, 1952, to December 6, 1952.

Mr. Radice filed claim on the grounds that Carrier violated Rule 2-A-1 when it permitted Mr. Reilly to serve on his assignment as an extra for more than 30 days without bulletining the position. Mr. Radice was allowed \$576.87 for the period from October 13, 1952 to December 9, 1952, the date Mr. Reilly ceased to work the position. After an interval Mr. Radice advised Carrier that the settlement was not satisfactory and pursued the identical claim on the grounds that Carrier continued to violate the same rule of the Agreement by assigning the work to other extra employees until May 9, 1953, when the violation ceased.

Carrier counters with the assertion that it already settled the claim with the payment of \$576.87. It further submits that Claimant is not entitled to additional compensation, for on December 9, 1952, the violation was corrected by notice given to Baggage man C. Dowling, the incumbent of regular position S-4-C97, changing his assignment location to Elevator M-4 on Platform 4.

Although Claimant takes the position that the acceptance of this compensation was conditional pending the correction of the violation, we find significant that at first Claimant only objected to the commencement date of the settlement; it did not protest the termination date. Later, in pursuing the original claim, he requested compensation for the period beyond the termination date of December 9 to extend to May 9, 1953. The monetary settlement was made on the basis that Mr. Reilly no longer occupied the position after December 9. Although Claimant asserts that other extra employees occupied the position, he fails to name them or fails to present evidence that Carrier did not assign a regular Baggage man, C. Dowling, to the position on December 9, 1952.

The record does not include the December 9th notice which Organization denies knowledge of, but Claimant does not convince us that Mr. Dowling did not receive such notice and that he did not take over the position on December 10th.

In view of the compensation already received by Claimant for the period ending December 9, 1952, and in view of the fact that Claimant has not supported his contention that other extra employees occupied the position after that date and that the regular employee, Mr. Dowling, did not take over the position on December 10th, we cannot sustain the claim.

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 Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1964.