

Award No. 13091
Docket No. CL-13261

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

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

THE SAINT PAUL UNION DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5171) that:

1. The Carrier violated the rules and provisions of the Clerks' Agreement, when on February 18, 1960 it required certain employees in the Red Cap-Porter Department of The Saint Paul Union Depot to suspend work to absorb the meal period in violation of Rule 31 (d) of the current agreement covering employees of our craft and class.

2. That the Carrier now be required to compensate the following employees for one hour overtime daily commencing March 13, 1960 and each and every day thereafter until the violation is discontinued:

James Toliver	Ezell Thomas	John Murphy
Godfrey Rawlings	Charles White	Reuben Neal
James Thomas	Erwin Deloney	Huron Shelton
William Payne	E. E. Gilbreath	James Young
Nelson Pugh	Lee Gwynne	Wm. T. Vernon
Jack Mills	Earlie Adkinson	Bishop Neal
		Nelson Briley

3. That the Carrier be required to compensate the following employees for thirty-minutes at the overtime rate for March 13, 1960 and each and every day thereafter until the violation is discontinued:

Herbert Whitmore	Cecil Neal	A. B. Parker
John Lawrence	Cornelius Benner	Bert Carter

4. That the Carrier be required to compensate, in addition to the above-named claimants, all others similarly affected and their successors.

The Carrier has shown that the normal duties performed by red caps are not continuous covering the twenty-four hour period, whereas Rule 31 (d) comprehends continuous service covering the twenty-four hour period. The claim covered by this docket should therefore be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to February 18, 1960, the Claimants, Red Cap-Porters at Saint Paul Union Depot each worked eight (8) hour shifts. During this eight hour period they were allowed a twenty minute period for lunch. Their pay continued during such 20 minute lunch period. After February 18, 1960, the Carrier instituted meal periods of one hour in some cases, and 30 minutes in some other cases, for these Claimants. They were not paid for these meal periods, but only for their 8 hour work shift. They now claim at the overtime rate for the time which their shift extends beyond an eight (8) hour period by reason of their meal period.

In support of their position, Claimants' cite Rule 31 (d) which reads:

"For regular operations requiring continuous hours, eight (8) consecutive hours without meal period will be assigned as constituting a day's work, in which case twenty (20) minutes with pay shall be allowed for meal period between the ending of the three and one-half (3½) and the beginning of six and one-half (6½) hours after starting work."

Carrier denies that the above provision is applicable. It takes the position that "regular operations requiring continuous hours" do not exist among Red Cap-Porters at Saint Paul Union Depot so as to invoke the application of Rule 31 (d) above quoted. This position is based upon the contention that there is no Red Cap-Porter operation from 12:00 Midnight until 5:30 A. M.

The record reveals that there are several Red Cap-Porters on duty from 5:30 A. M. to 12:00 Midnight. It also appears that a "porter-supervisor" is on duty from 11:30 P. M. to 7:30 A. M. Carrier contends that the Red Cap-Porter's "predominant" duties during the 5:30 A. M. to 12:00 Midnight period consist of handling bags, with only "incidental" janitorial services. On the otherhand, it contends the porter-supervisor's predominant duties during the 11:30 P. M. to 7:30 A. M. shift are janitorial in nature. In points out that this is especially true from 12:00 Midnight to 5:30 A. M. when no trains are scheduled to arrive. It is their position that this does not constitute the "regular operations requiring continuous hours" because there is no 24 hour period operation of similar or identical duties.

Claimants, in rebuttal, point out that the duties assigned to the "porter-supervisor" include the "general duties of Red Cap-Porter" and is in this respect, identical to the assigned duties of all Red Cap-Porters at the Saint Paul Union Depot, regardless of shift or trick. They point out that all Red Cap-Porters perform janitorial as well as baggage handling services and that in fact there are no "janitors" as a separate class at this depot. They seem to agree that the porter-supervisor does more janitorial work than baggage handling during the 12:00 Midnight to 5:30 A. M. period, but point out that he is the only Red Cap-Porter on duty to handle any baggage for trains arriving or departing during this period because of a deviation from their schedule, or to handle baggage of people arriving prior to 5:30 A. M. It is their position that this does constitute "regular operations requiring con-

tinuous hours" over the full twenty-four hour period and thus invokes the requirements of Rule 31 (d) in regard the 20 minute meal period with pay.

Although there appears to be some differences in the duties emphasized during the 24 hour period, we are persuaded that these differences do not prevent this from being "regular operations requiring continuous hours" of Red Cap-Porters at this depot. The bulletin describes all of the positions' duties as "general duties of Red Cap-Porters." It would appear that at any-time during the 24 hour period a Red Cap-Porter might well be called to perform either baggage handling or janitorial work. It is unlikely that any two Red Cap-Porters on separate shifts perform identical amounts of janitorial and baggage handling duties or in the same proportion. We would, therefore, hesitate to say that it was not a "regular operation requiring continuous hours" merely because at some period he might be doing one or the other of his duties exclusive of the other. We, therefore, hold that Rule 31 (d) is applicable to the Red Cap-Porter operation at Saint Paul Union Depot.

Carrier also contends that Claimants have not properly progressed the above claim and assert that they cannot now assert the issue above decided. After carefully reviewing the record, we are of the opinion that the above issue was thoroughly contended while still on the property and that Claimants have merely abandoned, at this stage, and in this case, an alternate contention that two shifts would be sufficient to constitute regular operations requiring continuous hours.

Inasmuch as Claimants were required to work beyond their regular eight (8) hour shift or trick, they should be compensated at the overtime rate for such excess.

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 the Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1964.