

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5340), that:

1. The Carrier violated and continues to violate the Clerks' Agreement when on February 27, 1961, and each succeeding date it did not use Station Attendants to deliver mail to Star Route trucks at the Bluefield, West Virginia Passenger Station and did permit or require persons, who are not employees of the Carrier subject to the Agreement, to perform this work.

2. Eight hours pay at the applicable pro rata rate shall now be allowed the senior available extra Station Attendant or, if no extra Station Attendant available, then payment shall be made in favor of the senior furloughed Station Attendant. Presently the extra board employees are W. W. Jones and B. R. Harrell. Qualified furloughed employees are E. G. Bolden, T. V. Garner, L. C. Riggins, Jr., W. W. Farmer, Jr., C. R. Hartwell, D. E. Bryant, N. J. Marrs, C. A. Hurst, C. T. Bailey, R. M. Hamilton and C. G. Whitlow.

3. As provided for in Rule 41, Section 3, this one claim is filed for February 27, 1961, and each succeeding day as a continuous claim covering a continuous violation until proper settlement is made thereof.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains at its Bluefield, West Virginia Passenger Station a force of Station Attendants, whose work is commensurable to that of employees identified as "laborers in and around stations" and "mail, baggage and parcel room employees (other than Clerks)" as defined in the Scope Rule of the Agreement. This force consists of eleven Station Attendant positions as follows:

- 2 — 7 day positions — 6:30 A. M. to 3:00 P. M.
- 4 — 5 day positions — 6:30 A. M. to 3:00 P. M.
- 2 — 7 day positions — 3:00 P. M. to 11:30 P. M.
- 2 — 6 day positions — 3:00 P. M. to 11:30 P. M.
- 1 — 5 day position — 3:00 P. M. to 11:30 P. M.

Passenger Station and did permit or require persons, who are not employees of the Carrier subject to to Agreement, to perform this work.

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As provided for in Rule 41, Section 3, this one claim is filed for February 27, 1961 and each succeeding day as a continuing claim covering a continuous violation until proper settlement is made.

The rightfully entitled extra or furloughed Station Attendant shall be determined by a check of the Carrier's payroll or other records."

The Carrier declined the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue to be resolved is whether employees not covered by the Clerks' Agreement performed work in violation of that Agreement.

Rule 1 — Scope lists job classifications of positions that belong to employees covered by the Agreement. It does not define nor does it describe the work. In the absence of such definition or description, it is necessary for the Petitioner to show that this work belongs exclusively to Claimants.

Petitioner alleges that "Mail for delivery to Star Route trucks departing Bluefield between the hours of 11:30 P.M. and 6:30 A.M. was handled in one of the two ways." In some instances Station Attendants loaded a Post Office Department truck before going off duty at 11:30 P.M. which would be taken by a Post Office Department employee to the Star Route trucks. At other times "the Star Route trucks were placed for loading at the Passenger Station and were loaded by the Station Attendants prior to going off duty at 11:30 P.M. After loading, the Station Attendants locked the trucks, which remained at the Passenger Station until the Star Route Truck drivers reported at the designated time between the hours of 11:30 P.M. and 6:30 A.M. and started their regular mail runs."

Carrier categorically denies that Station Attendants loaded the Star Route trucks and left the loaded trucks unprotected at night. On the contrary, Carrier alleges that prior to February 27, 1961, Station Attendants pulled loaded station platform trucks into the mail storage room for overnight storage and delivery to mail trucks the following day, or that Station Attendants pulled them about 30 to 40 feet to a loading platform. At times Station Attendants handed pouches of mail from station platform trucks to the drivers of the mail truck and at other times the truck drivers alone transferred the mail pouches from the station platform trucks to the mail trucks.

Station Attendants did not always assist in loading the mail trucks, nor did they always pull the platform trucks to the loading platform. Since February 27, 1961, on orders from the Post Office Department, drivers of the mail trucks pick up the mail left in the storage room and load the mail on the trucks. This is done when no Station Attendants are on duty. There was no force reduction.

The burden of establishing the fact that Station Attendants had exclusively loaded the Star Route trucks or exclusively pull the platform truck to the loading platform rests with the Petitioner. This it has failed to do. The claim must, accordingly, be denied.

In its Rebuttal Submission, Petitioner, for the first time, has attached statements of five Station Attendants alleging that prior to February 27, 1961, Star Route truck drivers did not enter the mail storage room and pull loaded platform trucks to the loading platform. This was not presented by the Petitioner on the property. On the basis of the provisions of Circular No. 1 and the numerous awards of this Division, they may not now be considered.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1966.