



Award No. 16053
Docket No. TE-14457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement between the parties when on March 3, 12, 21, April 5 and 17, 1962, it required or permitted Baggage-master D. Salamone, an employe not covered by the Agreement, to perform work of handling baggage to and from the warehouse at Tarpon Springs, Florida, Dunedin, Florida and Largo, Florida, during the hours the agent or operator was not on duty.

2. Carrier shall compensate E. W. Gideons two hours' pay at the time and one-half rate for March 3, 1962; R. U. Boyd, two hours' pay at the time and one-half rate for March 12 and April 17, 1962; E. B. Farmer, two hours' pay at the time and one-half rate for March 21 and April 5, 1962, for the violations of the Agreement set forth above.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The dispute submitted herein was handled on the property in the usual manner to the highest officer designated by the Carrier to handle such disputes and has been declined by him. Under the provisions of Section 3, Railway Labor Act, as amended, this Board has jurisdiction over the parties and the subject matter.

The matter at issue involves the Carrier requiring or permitting Baggage-master D. Salamone entering the warehouse at Tarpon Springs, Dunedin and Largo, Florida, to pick up baggage during the hours the occupants of the respective positions were off duty.

Employes have in good faith sought adjustment of the dispute in handling with Carrier's duly authorized officials, as prescribed in the Railway Labor

for two hours' work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis. * * *

Inasmuch as these claims were wholly lacking in merit and were not sustained by the current agreement, they were at all times declined.

For the information of the Board, Train 38 is scheduled to arrive Largo at 7:35 P. M., Dunedin at 8:05 P. M. and Tarpon Springs at 8:25 P. M. At Largo only an agent-telegrapher is assigned; at Dunedin, an agent-telegrapher and a laborer, and at Tarpon Springs, a supervisory agent, clerk-telegrapher and a laborer.

OPINION OF BOARD: The Employees contend that the Carrier violated the Scope Rule of the Agreement when, on five occasions, it permitted a baggage-master to handle baggage to and from the warehouse at three Florida stations when the agent at such stations was not on duty.

The Employees offer no evidence to suggest that, by custom, tradition or past practice, the handling of baggage has been reserved to persons covered by their Agreement. The Carrier denies this is the case, but it offered no evidence during the handling of the claim on the property to support its position. The Board is thus left with conflicting assertions made by the two parties, unless it is to accept as probative evidence the undisputed statements by the Employees that on two occasions the Carrier settled similar claims in favor of the Employees.

This Board has earlier shown its reluctance to accept as probative evidence such settlements of claim. See Awards No. 12383 (Engelstein) 14533 and 14536 (Perelson). The wisdom of this is obvious; settlements of claims are notoriously made for many reasons, and their significance is always uncertain. What is more, the social desirability of having disputing parties compromise or settle their own disputes would not be fostered if such settlements become albatrosses hung from the necks of compromising parties. This Board rejects, as probative evidence, the Employees' recitation that the Carrier twice settled claims involving baggage handling in favor of the Employees.

The Board is left with a claim and with conflicting assertions, but no evidence. The claim must be dismissed. Nor can the Board consider the statements covering past practice, filed by the Carrier for the first time as exhibits to its submission to this Board. Such statements, never having been presented to the Employees during the handling of this claim on the property, have no part in proceedings of this type and can only be offered with the hope of prejudicing the Referee against the Employees' case.

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 no violation of the Agreement has been established.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1968.