



Award Number 17331

Docket Number CL-18150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

NEW ORLEANS UNION PASSENGER TERMINAL

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6597) that:

- (a) The New Orleans Union Passenger Terminal violated the Agreement between the parties on Sunday, December 24, 1967 when it failed to call and use Mr. C. Cottone for extra Ticket Clerk Position in accordance with his seniority and,
- (b) The New Orleans Union Passenger Terminal shall now be required to allow Mr. C. Cottone ten (10) hours compensation at the overtime rate of Ticket Clerk Position on December 24, 1967.

EMPLOYES' STATEMENT OF FACTS: The facts are as follows: There is in evidence an Agreement bearing effective date April 16, 1954, including revisions, (hereinafter referred to as Agreement) between the New Orleans Union Passenger Terminal (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which is on file with this Board and by reference thereto is hereby made a part of this dispute.

On Saturday, December 23, 1967, Carrier anticipated heavy business at the ticket counter for Sunday, December 24, 1967. Carrier called and used Mrs. Joyce Saltaformaggio who was a furloughed employe notwithstanding her seniority date of September 18, 1954 and placed her junior to Mr. C. Cottone, hereinafter referred to as the Claimant whose seniority date is August 21, 1949. At the time of this dispute Claimant was assigned to Mail Separator Position, hours 4:00 P.M. to 12:00 P.M., rest days, Sunday and Monday.

Claim was filed by the Employes for and in behalf of Claimant to Mr. E. P. Capelle, General Passenger and Ticket Agent, alleging that Carrier violated the Agreement when it failed to call and use Claimant for extra Ticket Clerk's Position because no extra or furloughed employe was available account of having already worked their forty (40) hours for this particular week. Under date of February 15, 1968, Mr. Cappelle wrote the Employes and advised that Claimant's home was called but his telephone was not answered,

extra help is known to be needed, calls be made as early as possible since other offices, may, also require additional help, and coordination is necessary in order that the principle of seniority be observed in calling extra help. Mr. Rapp called several employees in seniority order, among them, Mr. Cottone who held a regular position as a Mail and Baggage Handler on the date of the claim. His position as a Mail and Baggage Handler worked Tuesday through Saturday, with hours of 4:00 P.M. to 12:00 M.N. Since it was necessary to make the call for the aforesaid reasons of coordination, before Mr. Cottone commenced his assignment as a Mail and Baggage Handler, the call was made to his home. This was five (5) hours before Mr. Cottone was due to go to work as a Mail and Baggage Handler.

Mr. Rapp called Mr. Cottone's home and received no answer to the call. (See Carrier's Exhibit A, affidavit by Mr. Rapp). Since Mr. Cottone could not be contacted, Mr. Rapp then called a clerk, junior to him and filled the position.

Mr. J. R. Borrelli, Jr., General Chairman, made a claim, dated December 28, 1967, addressed to Mr. E. P. Capelle, General Passenger and Ticket Agent, for ten (10) hours pay at the time and one half rate, stating Mr. Cottone was available and willing to work on Sunday, December 24, 1967. Mr. Capelle declined the claim under date of February 15, 1968 based on the fact Mr. Cottone was called, but could not be reached and it was necessary that the position be filled so a junior employee was called.

Under date of March 8, 1968, Mr. Borrelli appealed the claim to the Terminal Manager which was declined on May 2, 1968 on the basis there was no violation of the Agreement since efforts were made to contact Mr. Cottone and being unsuccessful, a junior employee was used. Conference was held on May 30, 1968 at which conference Terminal Manager agreed to investigate further, but at a conference held again on June 11, 1968, the original decision was reiterated and the appeal declined since his investigation did not reveal any facts to sustain a contrary disposition of the case.

(Exhibits not reproduced)

OPINION OF BOARD: It is well established that the burden is upon the Petitioner to prove all essential elements of its claim. In the dispute covered by this docket, the Petitioner has not submitted probative evidence to warrant finding that the Carrier violated the Agreement. The claim will, therefore, be denied.

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.