

Award No. 18484
Docket No. CL-18783

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6777) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 4-A-3, first tour, December 19, 1967, Baggage Department, Pennsylvania Station, Pittsburgh, Pa., by improperly blanking regular position of Station Baggage man of J. T. Costello on his birthday.

(b) J. T. Costello be paid a day's pay at time and one-half, amount he would have earned had he been permitted to work that day. (Docket 2350)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline 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 former Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier respectively.

There was in effect a Rules Agreement, effective May 1, 1942, except as amended, reprinted as of September 1, 1965, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier (the former Pennsylvania Railroad) 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.

Effective February 1, 1968, the New York Central Company was merged into the Pennsylvania Railroad Company, and a new Company resulted, now known as the Penn Central Transportation Company. A new Clerical Rules Agreement became effective on that date. This is indicated here as a matter of information only, as the present dispute originated prior to this date.

pensated by payment of eight hours' pay at the pro rata rate for his birthday holiday. Extra and Seasonal employees performed service on this date during the 7:00 A.M. to 3:00 P.M. tour of duty.

By letter dated January 23, 1968, a claim was submitted to the Passenger Agent by the Local Chairman, Brotherhood of Railway and Airline Clerks alleging that the Claimant's position was improperly blanked on his birthday and that accordingly the Claimant should be compensated one day's wages at the time and one half rate. Such claim was properly denied.

The claim was docketed for discussion with the Superintendent-Personnel who, following a meeting held on March 4, 1968, denied said claim in a letter dated March 11, 1968.

The Organization, by letter dated March 22, 1968, requested that the claim be progressed by Joint Submission to the General Chairman and the Director-Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. A copy of the Joint Submission prepared in this case is attached as Exhibit A.

This claim was then discussed between the General Chairman and the Director-Labor Relations at a meeting held on December 18, 1968. At the meeting the Employees contended that it was not proper to blank an Employee's position on his birthday and use an extra employee on the absent employee's tour of duty. The Director-Labor Relations set forth his reasons for denying the claim in a letter dated March 21, 1969, copy of which is attached as Exhibit B.

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the issue to be decided by your Board is the propriety of the Carrier's action in blanking the position of the Claimant on his birthday while extra employee's were used to perform service on the tour of duty normally worked by the Claimant.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the incumbent of Station Baggage-man Position located in the Baggage Department, Pennsylvania Station, Pittsburgh, Penn, with rest days on Sunday and Monday. Claimant was given notice dated December 16, 1967 that his (Claimant's) position would be blanked Tuesday, December 19, 1967 for the reason that it was Claimant's birthday. Claimant was paid eight hours at the straight time rate for his birthday holiday and this claim was filed for time and one-half rate pay for that day. On this particular date, December 19, 1967, every available extra baggageman (20) was used in addition to every seasonal employee (7) hired for the Christmas mail season which included employees junior to Claimant. The Organization contends that Claimant's position was improperly blanked because extra employees were used on Claimant's tour of duty. Carrier contends that Claimant's position could properly be blanked for the reason that all extra employees used would have been used whether Claimant worked that day or not.

After careful consideration, it appears that Claimant's position was not blanked, as contended by Carrier. Every available extra man was used to perform work that would have been performed by Claimant if he had been al-

lowed to work on his birthday. Had no extra or seasonal help been employed on the date in question, this claim would be without merit. However, such is not the case here. No work was left undone and it must be concluded that the extra or seasonal employes performed work that would have been performed by this Claimant. To reason otherwise would be illogical.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.