NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY, DALLAS, TEXAS

STATEMENT OF CLAIM.—

"Claim of I. E. Steptoe, C. H. Hamilton, et al. (listed in statement of facts) that

"(1) they were regularly assigned employes;

"(2) they shall be paid a minimum of 8 hours for each day on which they were assigned or required to perform 8 hours or less work;

"(3) they shall be paid at overtime rates for all service performed beyond the limits established in Rule 2 of current agreement, and that

"(4) such claims shall be paid retroactively to September 20, 1934."

STATEMENT OF FACTS.—I. E. Steptoe and some twenty-five other employes are employed by the carrier herein in the handling of baggage and mail in the Union Passenger Station, Dallas, Texas. The rate of pay of each of them is 36¾ cents per hour. The baggage and mail department of this station is open for business and operated continuously sixteen hours every day. All but two of the employes have been employed since before September 20, 1934. Many have been employed for ten years or more.

This dispute arises out of the proper interpretation and the question of applicability of Rules 2 and 12 of the agreement between the parties hereto, dated March 1st, 1922, and reading as follows:

"RULE 2. *Day's work.*—Except as otherwise provided in these rules, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.

"When service is intermittent eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employes filling such positions shall be paid over-time for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, and also for all time in excess of twelve (12) consecutive hours computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

"Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the Management and duly accredited representatives of the employes. For such excepted positions the foregoing paragraph shall not apply.

"This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

"Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employes cannot otherwise be utilized.

"Employees covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours."

"RULE 12. *Reporting and not used.*—Employes reporting for duty when regularly assigned will be paid a minimum of eight (8) hours though not worked a full day. If in temporary service and called for duty a minimum of four hours will be allowed and if held on duty in excess of four (4) hours a minimum of eight (8) will be allowed."

The Union Passenger station at Dallas, Texas, has its peak periods every day when there are more trains arriving and departing than at any other time of the day. The first period is in the morning between the approximate hours of 6:30 A. M. and 9:30 A. M. and the other peak period is in the evening between the approximate hours of 7 P. M. and 11 P. M. Certain of the porters, baggage and mail handlers, work a regular eight hour day on a staggering schedule. It stands admitted, however, that those here involved in certain instances have been required to work less than eight hours in any one day and have been paid only for the time actually worked in that day and have in certain instances been required to work intermittently within a spread of as much as fourteen hours or more, receiving pay only for time actually worked.

September 18, 1934, claim was made on behalf of employes here involved, by A. J. Pickett, Chairman of the employes' Brotherhood. He on that day wrote the carrier advising the employees' position and contending that the carrier was not paying the employees here involved in accordance with its interpretaton of Rule 2 and Rule 12 of the agreement then extant between the carrier and employes above quoted.

On September 28, 1934, the carrier through its duly authorized representative made changes in porters' badges and posted a new schedule of time and hours for the employes. The schedule required duty of between three to eight hours on the part of each employe and required many of the men to be present early in the morning, to lay off during the day, and to report again in the evening. This schedule was in effect a revision of one which had been in effect since April 1, 1932.

EMPLOYES' POSITION.—The employes contend that all of the employes here involved are regularly assigned and hence are under and subject to Rule 2 above quoted, so they argue that each employe should be paid a minimum of eight (8) hours each day whether the work is intermittent or not and that if the work is intermittent the employe or employes required to spend more than twelve (12) hours on the job should receive overtime pay for time in excess of twelve (12) hours, in accordance with Rule 2.

CARRIERS' POSITION.—The carriers' main contention is that these employes are in temporary service and so within Rule 12 above quoted. The carrier argues that these men ar not regularly assigned and so are not under Rule 2.

OPINION OF THE BOARD.—The Board is of the opinion that the employes here involved are not in temporary service. Many of the men here involved have been employed by the carrier for at least ten (10) years. Two-thirds of the claimants have been employed by the carrier for over five (5) years. Each of the men has been engaged in this same work during his term of employment. A regular schedule of hours, time of reporting, time of quitting, etc., has been posted for these men since sometime in 1931. The men report regularly every day and at a regular time and know, and have known, the number of hours they are to work, etc. While it may be true that the employes here are part time employes, it can hardly be said that they are temporary. The word "temporary" is defined in Webster's Unabridged Dictionary as follows:

"Lasting for a time only; existing or continuing for a limited time."

Where a group of men have been employed, many as long as ten years, most of them as long as five years, it can hardly be said that their employment is temporary or existing only for a time. The carrier's claim that a long established practice permits a different construction than what we have here stated is of no avail. The mere fact that the carrier may have violated an agreement neither legalizes the act nor relieves the carrier of its obligation under its signed contract and agreement. Repeated violation does not authorize the commission of the act.

It follows from our interpretation of the applicability of Rules 2 and 12, that since the employes were not temporary they must have been regularly assigned and thus within Rule 2. However, in view of all the facts herein and in view of

the record as it stands at present, we feel that though the men here involved were not temporarily employed the case should not be decided at this time but should be remanded for further conferences on the property to be had under and in accordance with our interpretation of the applicability of Rules 2 and 12 here involved.

FINDINGS.—The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon and on the whole record and all the evidence, finds and holds:

That the carrier and 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 in view of the facts and the record as it here stands the case should be remanded for further conferences on the property.

AWARD

Claims remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1937.