

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
THE SAINT PAUL UNION DEPOT COMPANY**

STATEMENT OF CLAIM.—

"(a) Claim of employees that Rule No. 2, Current Revised Agreement, requires mutual agreement on number of regular full time and regular short shift employees in the Mail and Baggage Department of St. Paul Union Depot Company, St. Paul, Minnesota.

"(b) Claim of employees for a minimum of eight hours' pay each day, for senior short shift employees affected, when number of short shift employees worked on any day exceeds number of such employees mutually agreed to, retroactive to June 12, 1934."

EMPLOYEES' STATEMENT OF FACTS.—In April 1931, the parties to this dispute entered into a Mediation Agreement providing for the regulation by mutual agreement between the parties of the number of regular short-shift employees to be used in the Mail and Baggage Department. In May 1931, a memorandum of understanding was agreed to, fixing the number of regular short-shift employees that could be used. This agreement was amended by a supplemental agreement bearing date of March 28, 1933, which latter agreement fixed the maximum number of part-time employees at fifty-six (56), and carried a provision to maintain a spread of eighty (80) men between the full-time forces and part-time forces.

In June 1934, a dispute arose between the parties, caused by the carrier claiming the right to increase the number of regular part-time or short-shift employees when the number of full-time employees exceeded 136. The two parties then attempted to reach another supplementary agreement which would provide for a maximum number of sixty (60) regular part-time or short-shift employees, and to maintain a spread of eighty-one (81) men between full-time forces and part-time forces. Before this agreement was definitely consummated, the General Superintendent attempted to amend it so that the maximum number of regular part-time or short-shift employees could be increased automatically, at any time the number of full-time forces exceeded the number specified in the agreement. Through this proposed amendment of the carrier it sought to establish a percentage agreement whereby full-time and part-time employees would be maintained on a percentage basis of 70 percent full-time (eight-hour) and 30 percent part-time or short-hour employees.

The tentative agreement of August 3, 1934, was not consummated, and the carrier has, subsequent thereto, used as many part-time or short-shift employees as in its judgment it found necessary, paying such employees only for actual hours used.

There are in evidence agreements between the parties bearing effective dates of August 1, 1924, and April 7, 1931, and the following rules thereof are cited:

"RULE 1. Regular Assignment.—

"(a) The purpose of establishing a short-hour list is to provide and establish the (1) maximum number of regular positions and eight-hour assignments and the (2) minimum number of short-hour assignments.

"NOTE (1). The phrase 'maximum number of' means, as many as practicable.

"NOTE (2). The phrase 'minimum number of' means as few as conditions will permit.

shift or part-time employees that the carrier may use, except and unless the carrier compensates such excess employees as are used with a minimum of eight hours' pay per day under the provisions of Rule 39.

POSITION OF CARRIER.—The carrier contends the memorandum of understanding of March 28, 1933, clearly provided for maintaining a spread of 80 men between the full time and part time forces, which at the time of agreement consisted of 136 full time and 56 part time forces.

OPINION OF BOARD.—In the several rules and agreements that have been cited in support of this claim, and established and revised by mediation and conferences between the parties, both employees and carrier base their contentions particularly upon the application of Rule 2 of the Mediation Agreement of April 7, 1931, and the supplementary agreement entered into by the parties on May 4, 1931, together with the supplementary agreement of March 28, 1933, to the agreements entered into by the parties on April 7 and May 4, 1931.

In the application of Rule 1 of the Mediation Agreement of April 7, 1931, and the subsequent supplementary agreement between the parties on May 4, 1931, a means is outlined to handle the regularly recurring fluctuations of positions to the fullest extent possible by regular full-time employees; and, when all possible adjustments of this kind have been made and it appears that there will still be work which cannot be handled by the regular assigned full time employees to create a secondary group of regular short-shift employees to handle such remainder of the work.

In Rule 2 of the Mediation Agreement a means is outlined by which the determination as to the number of regular full-time employees and the number of employees on the regular short-shift list was to be fixed by mutual agreement in accordance with actual needs; and which could be changed by mutual agreement as frequently as might be necessary to meet changing conditions.

On March 28, 1933, a supplementary agreement to the agreements of April 7 and May 4, 1931, was entered into by the parties to maintain a spread of eighty men between full-time forces and the part-time forces, which at the time of the agreement was 136 full-time and 58 part-time employees, and in which the further condition was made that the number of part-time employees specified was the maximum number that could be employed.

In the submission of the carrier reference is made to a verbal agreement on June 12, 1934, in which a change was contemplated both in the number of full-time and part-time employees and in the spread between these two classes. This agreement, however, was not ratified and therefore cannot be considered.

In the present standing agreements between the parties as evidenced in this outline the Board is confronted with two outstanding facts, the one that the determination of the number of regular full-time employees and the number of employees on the short-shift list was to be fixed by mutual agreement and which could be changed by mutual agreement as frequently as might be necessary to meet changing conditions.

In further connection with this rule fixed by the Mediation Agreement on April 7, 1931, Rule 4 of that agreement provides a definite means by which the employees are to be given information by the carrier regarding the employment of full-time and short-shift employees, and be granted conferences by the appropriate officials to develop the facts and to consider suggestions, and this in order to establish a basis upon which a mutual agreement could be reached.

The second fact confronting the Board is that the supplementary agreement of March 28, 1933, while outlining a spread of eighty men "between the full-time forces and the part-time forces," limits that spread to the number employed at the time of the agreement, which was 136 full-time and 56 part-time employees, and then goes on to state that this number, or 56, was the "maximum number of part-time employees."

In the wording of this agreement the carrier agrees to maintain a spread of eighty men between the part-time and full-time employees on the basis of the number employed at the time of the agreement; but while nothing in the agreement limits the carrier from increasing the forces of full-time employees, a limitation is established so far as the part time employees are concerned, in the provision of the agreement to the effect that the number of part-time employees specified, or 56, was the maximum number of part-time employees that could be employed.

Under these conditions the Board cannot agree with the carrier as to any conditions which could increase the number of part-time employees beyond the maximum, or the greatest possible number, specified and established in the supplementary agreement, except it be by mutual agreement between the parties.

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

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

(a) That the Board sustains the position of the employees that the agreement of March 28, 1933, fixes the maximum number of part-time employees at 56; and

(b) That the claim of the employees for a minimum of eight hours' pay per day for senior part-time employees affected, when the number of part-time employees used were in excess of the maximum mutually agreed upon, shall be sustained, but limited in its retroactive application to senior part-time employees used subsequent to February 1, 1936.

AWARD

(a) Claim sustained.

(b) Claim sustained to the extent specified in the Findings of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

Attest: H. A. JOHNSON

Secretary

Dated at Chicago, Illinois, this 23rd day of September 1937.

