

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY
(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier's action at East Little Rock, Ark. Freight Station whereat two (2) porters, occupants of positions assigned to hours:

One—8:15 A. M. to 12:15 P. M.— 1:15 P. M. to 5:15 P. M.,
seven (7) days per week.

One—5:15 P. M. to 10:15 P. M.—11:15 P. M. to 2:15 A. M.,
seven (7) days per week.

are required to furnish and maintain at their own expense a bicycle for their use in the performance of their duties as messengers in violation of the agreement, and

1. That the employes be relieved of the obligation to furnish and maintain bicycles for use in the performance of messenger service for the railroad company;

2. That the employes be reimbursed in such amounts as involved in the purchase price of the bicycles which were in use on November 17th, 1940, the date which this dispute was formally presented to the superintendent, and also reimburse the employes to the extent of the purchase price of any bicycle it has become necessary to purchase as a 'replacement' subsequent to November 17th, 1940 (amounts to be determined upon basis of purchase invoice); and

3. That the employes be reimbursed for all moneys expended by them for maintenance cost while in company service (amounts to be verified by authentic receipted bills), subsequent to November 17th, 1940."

EMPLOYEES' STATEMENT OF FACTS: "There is a station force at the East Little Rock, Ark. Freight Station which in addition to other station force, such as clerks, freight handlers, etc. subject to the scope and operation of the clerks' agreement, consists of two (2) regularly established porter positions as listed below:

road to whom appeals may be made. It is acknowledged by the Carrier that the employes have prosecuted their case through the proper channels of appeal.

"Rule 74:

'Typewriters and other office equipment devices will be furnished by the railroad at offices where the management requires their use.'

This rule requires of the Carrier to furnish typewriter and other office equipment devices. Bicycles could hardly, by any stretch of the imagination, be considered as an office equipment device.

"Rule 82:

'This agreement shall be effective August 1, 1926, and shall continue in effect until December 31, 1927, and thereafter until it is changed as provided herein or under provisions of the Railway Labor Act.'

Should either of the parties to this agreement desire to revise or modify these rules, thirty (30) days' written advance notice, containing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon.'

This is the termination clause of the existing agreement. Just what connection this particular rule has with this case has not been explained by the complainants in their handling of the case with the Carrier."

OPINION OF BOARD: In final analysis this dispute resolves itself into an effort by the Organization to require the Carrier to abandon a long existing practice of requiring messengers to furnish their own bicycles as a condition precedent to employing them. That the practice had been of long standing when the first agreement between the Organization and the Carrier was executed is admitted. That there is no specific stipulation in the agreement prohibiting continuation of the practice is admitted—or at least is perfectly clear.

The Organization seeks to have Rules 3, 4, 34, and 74 construed so as to effect a prohibition of the practice. Rules 3 and 4 relate to seniority rights. Especial attention is called to the following language in Rule 4: "Promotion shall be based on seniority, fitness and ability; **fitness and ability being sufficient, seniority shall prevail. . .**" (Emphasis added.)

The argument is that a seniority right cannot be made to depend upon furnishing a bicycle. No seniority right is being asserted in this dispute. No one is here claiming the right to the position of messenger by virtue of seniority rights.

Rule 74 provides: "Typewriters and other office equipment devices will be furnished by the railroad at offices where the management requires their use." The Organization argues that bicycles are **equipment**. They are not, however, **office equipment** within the purview of the rule.

Rule 34 relates to grievances. Obviously that rule refers to grievances arising out of violation of the terms of the agreement. It cannot in itself be construed to form the basis of a dispute unless the agreement is breached in some other respect.

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 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 carrier has not violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.