

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that:

(1) The assigned starting time of regular positions in the Baggage Mail Department, Chicago Passenger Station (other than relief positions) must be the same each day of the assignment, and

(2) That employes of this Department who have been required to start earlier or work later on certain days of the week shall now be compensated for such service under provisions of overtime rules retroactive to February 1st, 1940."

EMPLOYES' STATEMENT OF FACTS: "(1) On February 1st, 1940, the U. S. Mail Department and the Baggage Department, previously operated as two separate departments, were consolidated into what is now known as the Baggage Mail Department.

"(2) In conference on January 17th, 1940 between Personnel Officers and General Chairman in connection with proposed consolidation of these departments request was made by General Chairman Seifert for adjustment of 'Staggered' starting times which were in effect on certain positions in both departments.

"(3) During the period since February 1st, 1940, there have been varying numbers of these staggered starting time positions, but on September 20th, 1940 there were sixteen such positions in the consolidated department as follows:

Loader 68-91, regular assignment 7:30 A. M. to 4:00 P. M. Sunday Assignment 6:30 A. M. to 3:00 P. M. One hour difference on Sundays.

Loader 71-91, regular assignment 3:00 P. M. to 11:30 P. M., Monday assignment 3:30 P. M. to 12:00 M. One-half hour difference on Mondays.

Loader 80-91, regular assignment 10:30 P. M. to 7:00 A. M. Sunday assignment 11:30 P. M. to 8:00 A. M. One hour difference on Sundays.

Trucker 98-92, regular assignment 7:30 A. M. to 4:00 P. M. Monday assignment 6:30 A. M. to 3:00 P. M. One hour difference on Sundays.

'Our investigation further indicates that the number of positions not having the same starting time each day of the assignment has been reduced to the absolute minimum, based on requirements of the service, excepting only such positions where the starting time is different on a given day for the accommodation of the incumbent of the position, and that we cannot consistently, in consideration of requirements of the service, establish the same starting time on each day of the assignment for such positions.

'In respect to question of whether, under provisions of rule 32, clerks' agreement, it is proper to establish a different starting time on different days of the week for a given position, it being your thought that in consideration of the language used in the rule, that is "regular assignments shall have a fixed starting time," the starting time on a given assignment must be the same time each day of the assignment. Starting time rule, clerks' agreement, as now written has been substantially the same since July 1, 1921, or a period in excess of 18 years, and under the accepted practice it has been recognized that it was entirely proper to establish starting time at a given time on certain days of the week and at another time on other days of the week, and that such time was fixed, provided the starting time was the same on a given day of the week—that is, Monday, Tuesday, etc.

'Taking into consideration all of the above facts there is no apparent reason why the established practice for a period in excess of 18 years should be changed and thereby unnecessarily penalize the railway company through the requirement of starting position at a time when services of the employee are not needed.'

'Further, the question in regard to the proper application of rule 32, clerks' agreement, was submitted to a System Board of Adjustment, C. & N. W.-C. St. P. M. & O. Railways established to handle clerks' cases on both railways. The case was designated as Docket No. 77 and involved starting time of transfer forces at Antigo, Wisconsin, assigned as follows:

4:00 A. M. to 1:00 P. M.—Mondays, Wednesdays and Fridays.
6:00 A. M. to 3:00 P. M.—Tuesdays, Thursdays and Saturdays.

A copy of the Board's award is attached and identified as Railway Company's Exhibit 'A.' J. E. Barry who signed the award as Chairman was the C. & N. W. Railway clerks' representative on this Adjustment Board.

"It is the position of the railway company that in consideration of the accepted interpretation of rule 32 in effect for a period of approximately 20 years and which interpretation was affirmed by a properly constituted tribunal or board on which the employees had equal representation with the railway company there would be no justification for sustaining the interpretation the employees are now endeavoring to place on the rule as indicated in this claim."

OPINION OF BOARD: The Employees contend that on February 1, 1940 U. S. Mail and Baggage Departments at the Chicago Passenger Station, previously operated as two separate departments, were consolidated into what is known as the Baggage Mail Department; that since that date employees of this department have been required to start earlier or work later on certain days of the week and that this is in violation of Rule 32 of the current agreement. The Carrier contends that the identical question which is presented in this case was decided by C. & N. W. Adjustment Board No. 2 in its Docket No. 77, dated June 8, 1932, and that since the question here presented was decided by the System Board whose decisions were by agreement final and binding on the parties, that decision should not be disturbed.

In Award 897 Referee Garrison speaking for the Division said:

"If (1) the claim in this case was the same as that submitted by the parties to the Line Board of Adjustment in 1933; and if (2) the decision of that Board, issued January 17, 1934, denied the claim on the merits; and if (3) this decision was lawfully arrived at, then the decision is binding on the parties and disposes of this case, for the agreement between the parties of April 7, 1927, setting up the Line Board, provided that its decision 'shall be final and binding on both parties.'"

We will consider in order the three questions set out in the quotation.

The Carrier states that at the request of the Board it submitted a joint statement of facts involved in Docket No. 77, the brief of the Brotherhood in support of its position and the brief of the Carrier submitted at the time of the oral hearing in that case. A copy of the Board's award is in the record. We quote from the joint statement of facts in Docket No. 77:

"Prior to July 13, 1931, the entire transfer force at Antigo, Wisconsin commenced work at 5:00 A. M. Effective July 13th the assignments were changed to start at 4:00 A. M. on Mondays, Wednesdays and Fridays and at 6:00 A. M. on Tuesdays, Thursdays and Saturdays."

It was the position of the Organization that the alternate starting time was in violation of Rule 32. The first paragraph of that rule as cited in Employees' brief in Docket No. 77 reads as follows:

"Regular assignments shall have a fixed starting time, which shall not be changed without at least two (2) days' advance notice to the employees affected."

Careful consideration of the record in Docket No. 77 compels us to come to the conclusion that the claim as presented to the Adjustment Board No. 2 in 1932 was the same as the claim now presented to us; that the position of the Organization was the same, to wit, a violation of Rule 32; that it concerned the same class of employees as in the case before us. Was the claim denied on its merits? We conclude that it was. The decision in Docket No. 77 definitely decided the issues in that case. We quote the decision:

"This case having been presented to the Chicago and North Western Ry. Co.—Chicago, St. Paul, Minneapolis and Omaha Ry. Co. Board of Adjustment No. 2 on June 7th, claim was given full consideration by the Board. Employees' claim denied.

(Signed) J. E. Barry
Chairman."

As far as this record shows, the decision reached by Adjustment Board No. 2 was lawfully arrived at. No contention is made by the Employees that it was not.

In the recent award, No. 1277, the Board, confronted with a similar case, said:

"The Board is unable to see any material distinction between the facts in Decision No. 52 and the facts in the claim in this dispute.

"The conductor in that case and the track foreman in this case were stationed at the telephones for the purpose of finding out when the tracks could be used and did report to blockmen when the trains of this carrier had passed.

"The Board is of the opinion that Decisions 14, 19 and 70 of the Pennsylvania Telegraphers' Reviewing Committee are not parallel to the facts in this case.

"Based solely upon the fact that Decision No. 52 is controlling, the Board is of the opinion that there was no violation of the prevailing Agreement."

See also Awards 233, 234, and 897.

In the submission in this case the Employees concede that there may be some merit to the Carrier's argument that Docket No. 77 permits Carrier to make the assignments to which the petitioner here objects and then argues that Docket No. 77 is completely out of harmony with the awards of this Board; that it should, in effect, be overruled. We think the best answer to this is the statement of Referee Garrison in Award 233: "The decision is not a mere precedent which we might disregard if we wished. It is the equivalent of an arbitration award which by agreement binds the parties. The function of our Board is to interpret and apply agreements between the parties."

In view of the repeated holdings of this Board we come to the conclusion that the decision of Adjustment Board No. 2 in Docket No. 77 is binding in the case at bar. In reaching this result we do not pass upon the merits of the controversy but hold merely that the decision in Docket No. 77 is controlling with respect to the claim here presented. This record does not show that there have been any changes in the practices used on this Carrier in regard to Rule 32 since the decision of Adjustment Board No. 2 was rendered. If as a result of investigation or otherwise, the Employees conclude that practices are being engaged in of a sort not covered by the decision in Docket No. 77, they are at liberty to resubmit the case.

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 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 parties are bound by the decision of Adjustment Board No. 2, Docket No. 77, dated June 8, 1932 denying the claim involving the same alleged violations as in this dispute.

AWARD

Claim denied without prejudice to the rights of the employees to resubmit the case on a showing that practices are being engaged in of a sort not covered by the decision in Docket No. 77 of Adjustment Board No. 2, dated June 8, 1932, as construed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1941.