

Award No. 2026
Docket No. CL-1944

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that L. F. Marks, G. J. Goodwin, J. T. McIntyre, W. P. Reece, Fritz Hauser, F. W. Giles and W. K. Davidson be paid the difference between Mail Handler rate of 61% cents per hour and the Mail Dispatcher and/or Assistant Foreman rate of \$5.80 per day at pro rata and/or overtime rate as provided in Rules Agreement for time and dates as follows:

Date		HOURS WORKED				
1940		L. F. Marks	G. J. Goodwin	J. T. McIntyre	W. P. Reece	
December	14	—	—	8	—	
"	15	—	—	* —	—	
"	16	8	8	8	* 8	
"	17	8	8	8	8	
"	18	12	13-1/2	12	13-1/3	
"	19	12-1/4	13	12-3/4	12-1/4	
"	20	13-2/3	13-1/3	13-2/3	13-1/4	
"	21	14-1/4	14-1/3	14-5/6	14	
"	22	*11-1/12	*10-5/12	*11-1/3	10-7/12	
"	23	10-1/3	8-11/12	—	* 9-2/3	
		Fritz Hauser	F. W. Giles	W. K. Davidson		
December	16	8	8	—		
"	17	8-11/12	8	* 9		
"	18	10-2/3	11-3/4	# 10		
"	19	13-1/4	12-11/12	# 10		
"	20	13-1/3	13	# 10		
"	21	14-1/12	13-3/4	# 10-1/2		
"	22	*10-2/3	*10-1/3	# 10-1/2		
"	23	10-1/3	10-5/12	# 10		
"	24	—	—	* # 10		

*Assigned Day of Rest. Time and one-half rate as per Rule 43.

**Time and one half rate for time worked in excess of 8 hours as per Rule 37.

#Includes one hour meal period work. Pro rata as per Rule 34.

EMPLOYEES' STATEMENT OF FACTS: Outside of the period of time involved in the claim in this case the employee claimants are assigned as Mail Handlers in the Mail & Baggage Department at the Kansas City Union Station; are engaged in the interstation handling and transportation of U. S.

regularly assigned duties of placing the parcels on trucks for outgoing trains and during the heaviest peak of parcel handling, newly hired extra men were assigned to assist them. The new men, being unfamiliar with the disposition of the parcels, were told by the claimants on which trucks the parcels should be placed. The claimants gave these new men this information concurrent with their own handling of parcels. These parcels had already been dispatched by the regular Mail Dispatcher to the proper railroads for movement to the towns addressed, and trucked from a primary sorting place to final separating points, where the parcels were distributed onto other trucks placed in spaces assigned for the individual trains of each railroad.

The only difference between the work performed by the claimants in normal times and the work performed by them during the holiday rush was that in normal times they themselves carried all of the parcels to these trucks, while during the holiday rush they had assistance from the new extra men.

The Organization bases its claim on the first paragraph of Rule 45, and Rule 47. As to Rule 45, no new positions were created, therefore Rule 45 is not involved. As to Rule 47, the claimants were not temporarily or permanently assigned to the higher rated positions of Assistant Foremen. There was on duty an Assistant Foreman who was assigned to oversee all of the parcel handling and to arrange for the allocation of the extra force to expedite the work. The claimants were not charged with any responsibility for these new men, nor did they exercise any supervision over them. Even if they had, and thereby had rendered some assistance to the Assistant Foreman, the last sentence of Rule 47, which reads:

"Assisting a higher-rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment,"

would nullify the claim, as temporarily assisting a higher rated employe does not place the lower rated employe on a "temporary assignment" to a higher rated position; the Rule clearly specifies that.

OPINION OF BOARD: The decision in this case requires a consideration and appraisal of the evidence given at an investigation into the facts which was made by the Carrier on June 23, 1941. At this investigation several witnesses testified and the substance of their testimony will necessarily be set forth. Before considering these details of evidence it should be pointed out that the system for handling mail in the Kansas City Terminal is shown by the record to be of considerable complexity, involving many different railroads, many different trains on each railroad, and hundreds of towns and cities for which the mail must be sorted and to which it must be properly dispatched.

At the investigation above referred to Mr. J. F. Wolf, Superintendent, testified that there was a general layout for handling the mail with loading docks and primary separation docks. He described the method of handling and defined the normal or ordinary duties of mail handlers in normal times, and also during the holiday period rush. He testified that in normal times the mail handlers became familiar with the proper trucks and trains to which the mail has to be distributed and that during the last holiday period on December 13th, two assistant foremen were put on, one on the lower and one on the upper dock; that on the 14th three additional assistant foremen were put on, on the 17th four more and one more on the 18th. He further testified that the mail handlers worked like ordinary "they all pitch in and put the mail on the right trucks" and that they had authority to supervise the work and did in fact dispatch mail. He said that the work at Christmas time was approximately three times normal but did not mention the number of extra men put on.

W. K. Davidson, one of the claimants, testified as to the duties in normal and holiday times, his normal job being that of a mail handler. He said that during the holiday period it called for leadership by the mail handlers in

handling the mail because new men would come on who were not familiar with the mail and how it should be dispatched, and that it became necessary for experienced mail handlers to tell these new or "green" men what to do with the sacks and parcels. His testimony indicates that he actually did work as a mail dispatcher and that Mr. Wolf told him to "Get right over here Dave and keep these men busy." There is no serious conflict between his testimony and that of Superintendent Wolf.

Foreman A. W. Harbstreet gave testimony similar to that of Mr. Wolf, but it is clear from the substance of his testimony that he did instruct the mail handlers who are claimants here to do work which would amount to dispatching, and that he told them to instruct and direct the new men who didn't know the layout, or to dispose of the parcels correctly, and that without the help of older men the green men would not know what to do with the parcels. He stated definitely that the additional force of new men could not handle the mail at all unless some of the regular mail handlers told them what to do. It further appears from the testimony of this witness that these mail handlers told the Superintendent that they expected to be paid the rate for mail dispatchers during the holiday rush and had not succeeded in getting any satisfactory agreement. On one of these days he went into the sub-basement and found that the four mail handlers had quit telling the extra men which trucks to put the mail on. He didn't say so in so many words, but it was apparent that things were not going right, and that he and Claimant Goodwin went to Mr. Jones' office. He left Mr. Goodwin in Jones' office. The witness testified that after the men came back from Mr. Jones' office he did not tell them to "dispatch or else" but that they should go ahead as usual. F. W. Giles, who is one of the claimants, explained the handling of parcels and mail and how they had to change around to meet the holiday rush. He testified that during the period claimed he actually did the work of a mail dispatcher. Another claimant, J. T. McIntyre, testified to the same effect as also did W. P. Reece, another claimant.

Mr. Reece further testified that Mr. Harbstreet told him to "dispatch or else." That Mr. Harbstreet came to see him and the other claimants and said "are you telling these men (referring to the green men) where the parcels go?" The witness said that he had been until that day and that Mr. Harbstreet asked him what was the matter and that he said "I am doing what the rest are" and that Harbstreet said "By God you either tell them where they go or else." The testimony of the claimants F. D. Marks, Fritz Hauser and G. J. Goodwin is substantially the same. Mr. Goodwin said that he agreed with Mr. Jones that the men should go ahead and that they would settle the matter after the Christmas rush. This testimony is corroborated by a letter of October 18, 1941 written to the General Chairman of the Brotherhood by Superintendent Voorhees which refers to the conference in Mr. Jones' office, and said:

"It was agreed during this conference that further check would be made by Mr. Jones and yourself with reference to the number of days actually involved. Mr. Jones' report on developments of that meeting indicates that it was agreed that Mail Handler Davidson directed the sorting of mail in Section E through the period of December 17 to December 24, inclusive. Mail Handlers Hauser, Giles Reece, Goodwin and Marks performed assorting service between the dates of December 16 and 23 inclusive, and Mail Handler McIntyre performed such service on dates of December 14, 16, 17, 18, 19, 20, 21 and 22."

It appears from the statements of both parties that an assistant foreman is one who supervises and assists a group or groups of mail or baggage handlers loading or unloading, separating or sorting of mail or baggage, and the delivery of same to docks or trains; that a mail dispatcher is an employe whose duties consist primarily of supervising or assisting mail handlers in the separating and sorting of mail either for outbound dispatch or disposition of inbound. A mail dispatcher is an employe who has had many years of experience in the handling of mail at the Kansas City Union Station, and who has, by application to his work and study, become thoroughly informed as to the geography of the

country, territory served by different railroads, the train schedules of the various lines, train connections at junction points, U. S. Railway Mail routes and other pertinent information having a bearing on the dispatch of United States Mail. These employees supervise and assist in the various operations necessary to the prompt and orderly separation, dispatch, and receipt of United States Mail.

On this record the Referee finds it necessary to make certain findings of fact which will determine the award. It is apparent that a system of great complexity must be known to a mail dispatcher and could not possibly be known to an untrained or "green" employe. Such untrained employes would require constant advice and information as to what disposition to make of any but the most obviously disposable parcels. It is entirely clear to the Referee that mail handlers of reasonable intelligence would in the course of time acquire enough information as to schedules, trains, geography, etc. so that they could dispatch mail if necessary. It is further apparent that with the tripled volume of mail at holiday time and a large influx of untrained men, a great deal of extra dispatching would be necessary.

The Referee finds as a fact that at the beginning of this particular Christmas rush these men who are now making claim for extra compensation decided that they were being used on a higher rated position without assurance of the higher rate being paid, and that without going on a strike or doing anything illegal they simply quit telling the green men what to do. It is apparent from the record that when they quit telling the new men what to do things began to get into a mess, which Mr. Harbstreet and Mr. Jones had to straighten out. The evidence is not entirely clear but it is very persuasive that when these men went back to work telling the other men what to do and actually performed the duties of mail dispatchers they were promised the higher rate of pay. Whether or not they were actually promised it, they actually did the higher rated work, they did it for the benefit of their employer, and with their employer's full knowledge and consent, which in the opinion of this Referee amounts to an assignment to do the work.

It is the opinion of the Board, based upon these findings of fact, that the above named claimants are entitled to be paid at the mail dispatcher's rate for the times claimed by them and that the claim should be allowed.

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

That the above named claimants are entitled to be paid at the mail dispatcher's rate for the times claimed by them, and that the claim should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1942.