

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Wage Agreement and Working Agreement between the parties was violated April 29, 1941, when Usher (Red Cap) Geo. E. Rose was deprived of the opportunity of handling 48 pieces of hand baggage on that date for passengers arriving at the Kansas City Union Station on C. M. St. P. & Pac. Train No. 25; and that

(b) Usher Geo. E. Rose be reimbursed by the Carrier (Kansas City Terminal Railway Company) in amount of \$4.11 for loss in earnings suffered and resulting from such violation.

There is in evidence a Rules' Agreement between the parties bearing effective date of April 5, 1939; also a Mediation Agreement carrying effective date of December 16, 1940.

EMPLOYEES' STATEMENT OF FACTS: On the morning of April 29, 1941, Red Cap Geo. E. Rose was assigned in the regular manner to meet incoming C. M. St. P. & Pac. train No. 25. Arriving at the Pullman section of the train he found a party of young men, part of whom he learned desired to make connection with M-K-T train No. 25 and the remainder with Frisco train No. 117. Baggage in the possession of the passengers was unloaded in the usual manner. Rose, assisted by two of the men in the party, removed the baggage from the vestibule and placed it on the platform. Rose was engaged by someone in the party and then loaded the baggage, consisting of 48 pieces, on a platform truck for the purpose of and preparatory to transporting same to the connecting trains. After the baggage had been loaded on the truck a depot passenger agent of the C. M. St. P. & Pac. arrived and informed those in the party in charge of the baggage that the Baggage Department would take care of same. When the party learned that they would not have to pay for a Red Cap, Rose was dismissed.

Thereafter, an employe of the Mail & Baggage Department, driving a power truck, delivered the baggage, using two trailer trucks, to the respective connecting trains. At Frisco train 117 a member of the party stepped off the train, pointed out 6 pieces, which were placed in a passenger car, no checks being attached to this baggage. The remainder of the baggage was delivered and loaded in the baggage car of M-K-T train 25, at which point an employe of the Mail & Baggage Department attached checks issued by the Baggage Office. The checks so attached were the forms used in checking baggage under baggage regulations and tariff.

That the passengers not only didn't have possession of the baggage, but never saw it after leaving Davis Junction until their arrival at Kansas City.

Therefore, since the Organization has predicated its claim on the fact that the baggage was not checked at Davis Junction, and we have shown that the application of baggage checks has no bearing whatever on the Usher agreements, and since the Organization also predicates its claim on the issue of who had possession of the baggage on arrival at Kansas City, and we have shown that the baggage was in the possession of the Railroad, we ask the Board to dismiss this claim, as there cannot be shown where the Carrier violated the Usher agreements in any respect.

OPINION OF BOARD: There are some disputed facts in the record, but the Board thinks that the following facts are substantiated by the record.

A group of men had been taken by bus from Camp Grant to Davis Junction, Illinois, to make connection with Milwaukee train 107-25. As they were late in arriving at this station this train was held for them, and time did not permit the checking of their baggage through to final destination, which was Muskogee, Oklahoma City, and Corsicana, Texas. The baggage was loaded in one end of the tourist car occupied by these men. While these men were Army men, they were not in uniform, but were traveling on Government transportation and under military supervision, there being one man in charge. After this train arrived in Kansas City, Missouri, it was necessary for some of these men to make connection with an M-K-T train and others to make connection with a Frisco train so that they could travel to their final destination.

When this Milwaukee train arrived in Kansas City, Geo. E. Rose, the claimant employe, was assigned by the respondent to meet this train. On its arrival, Rose assisted the porter in charge of this Pullman in unloading the baggage from the car platform to the station platform. The man in charge of the party left the group to contact the Milwaukee Railroad Passenger Agent, who was then engaged in making the necessary arrangements for checking of the baggage through to final destination. After this baggage was put on the station platform, Rose with the aid of two men started putting the baggage on a truck for transfer to the outgoing trains. Evidently these two young men told, or led Rose to believe that he was to handle this baggage, but he had issued no checks to the owners of the baggage. About this time the man in charge of the party came up and told Rose that the baggage was to be handled by the Baggage Department of the Milwaukee Railroad.

The pertinent parts of Mediation Agreement, Docket A-839, are as follows:

"The number of tags sold and hours worked will be determined daily.

"Employes required to perform eight hours' service will be paid \$3.00 for eight hours service, or at the rate of 37½ cents per hour, or ten cents per bag, parcel, or other personal effect, which ever is greater.

"Any instance where management avoids tags, ushers (Red Caps) will be credited for the number of checks or tags avoided."

It is to be noted under this rule that when tags are sold the Carrier must pay the ushers even though it voided the tags for any reason. In some instances the Carrier voided tags when the passenger was unable to pay for the usher service, but even then the Carrier must pay for the tags sold.

In the claim before us, no tags were sold. In fact, no one in authority even suggested that this group of men wanted usher service. On the contrary the only man in charge did not desire the service of an usher and so

told the claimant employe. It may be stated as a general rule that unless a passenger gives authority to a "Red Cap" for usher service there can be no charge. No one in authority indicated that services of an usher were needed.

The Board is of the Opinion that the facts in this claim are unlike a case where a passenger takes his personal effects with him in a Pullman car. But here these parcels were handled as baggage by the Milwaukee Railroad even though they were not loaded in the baggage car.

This Board recognized its previous awards that work subject to an agreement cannot be removed therefrom arbitrarily; that principle is too well settled to admit further questioning. But we do hold that under the peculiar facts involved in this claim that this principle is not violated. This for the reason the parcels in question were handled as baggage. Finding no violation of the current agreement, the claim should be denied.

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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1942.