Award No. 2552
Docket No. CL-2425

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

Scott M. Loftin and John W. Martin, Trustees

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

(a) The carrier is violating the scope and seniority rules of Clerks' Agreement by permitting employes not covered by that agreement to perform work previously assigned to and performed by Baggage Porters at Miami, Florida, and

(b) That the carrier shall now be required to restore the work in question to the scope and operation of the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: At the time the current agreement was negotiated and made effective, and for many years prior to December, 1941, the work of loading baggage from baggage room into automobiles of patrons, and the work of unloading baggage from automobiles of patrons for movement through the baggage room was performed by baggage porters at Miami, who are covered by the Clerks' Agreement.

Beginning in December 1941 the carrier issued instructions that baggage porters would not be permitted to carry baggage outside of the baggage room beyond the limits of the platform located opposite the north delivery door, but that such service would be performed by red caps, employes not covered by the Clerks' Agreement.

POSITION OF EMPLOYES: In support of their claim, the employes cite the following rules of January 1, 1938 agreement:

Rule 1

"These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

* * *

* * *

Group (3) Laborers employed in and around stations, storehouses and warehouses, baggage mail and parcel room porters, janitors and maids."

present complaint against the Railway permitting redcaps to perform this service should have no more consideration than would be given a complaint against the Railway permitting a patron to do this "work" for himself.

The employes have never shown that the "work" made subject-matter of this dispute was ever included within the scope of any agreement between the parties, either by express provision or by implication, and Carrier denies that it ever was. In view of this fact, the claim cannot properly be sustained.

9. Obviously in the operation of a passenger station there must be a dividing line where service to the public begins and ends. Redcaps serve the public exclusively, performing no duty for the Railway other than the selling of redcap checks, and the baggage porters work exclusively for the Railway, having no direct contact with the public. From a practical operating standpoint, it would be most unusual and inefficient to permit baggage room porters to go in and out of the baggage room at will, acting as redcaps and as baggage porters, according to their own election, or at the request of some patron. Efficient, satisfactory operation cannot be had without a definite division of work. The operation which the General Chairman claims should be permitted in Miami is not allowed to exist at any other station on the Florida East Coast Railway, and it cannot be permitted at Miami. Redcaps and baggage room porters are employed at other stations. The Carrier's instructions are the same at other stations, and the division of work is the same. There can be no sound reason for setting up an inefficient, unusual and improper condition at Miami.

The presently existing short distance between the baggage room counter and the "free area" is not a relevant factor. Rearrangement of the facilities may multiply that distance a hundred times. No great amount of imagination is required to visualize the results of then permitting baggage room porters to perform this personal service for patrons and absenting themselves from their fixed work location.

OPINION OF BOARD: Dockets CL-2374, CL-2379, CL-2400, CL-2425, MW-2367, CL-2526, CL-2527 and CL-2544 were initially deadlocked on the issue of giving notice to persons or organizations, other than parties to the disputes, whose interests may be affected by awards on the merits. The Carrier Members take the position that binding and conclusive awards can be rendered only after notice is given to all whose rights may be involved.

The question raised is not a new one to this Division. It has been exhaustively considered in at least five cases and adverted to in another. In two cases only has it been held that notice to other than parties to the dispute is a prerequisite to the rendition of a valid and binding award as between the parties. These are Awards Nos. 1193 and 1400. The first was a dispute involving seniority rights. Before hearing the dispute on the merits, the Board, sitting with a Referee, ordered notice to be given to the person whose seniority rights were challenged by the claim. In Award 1400 the claim was denied because parties whose rights would have been affected by its allowance had not been given notice. In the others—Awards Nos. 371, 844, 902 and 2253—decision on the merits was reached without notice to parties other than those to the dispute. In each of these cases, as in Awards Nos. 1193 and 1400, it was recognized that the dispute might involve rights of parties other than those of record. If there were such parties, the award, of course, would not be binding on them. But it was held that this did not affect the jurisdiction of the Board to entertain the dispute nor impair its power to render a binding and conclusive award as between the parties to it. This for the simple reason that neither the Statute (Section 3-j, The Railway Labor Act) nor the Rules of Procedure established by the Board require notice to parties other than those to the dispute.

Of course, the Carrier Members challenge this proposition. But it was so effectively maintained and established by analysis of the Statute in Awards Nos. 844, 902 and 2253 that it would seem no longer debatable. Indeed, as

we read the Opinions in Awards Nos. 1193 and 1400, no attempt was made to refute the proposition that the Statute and Rules of Procedure set up by the Board require notice only to the parties to the dispute. In Award 1400 the Referee's remarks amounted to nothing more than advice to the Board with respect to Rules of Procedure. He undoubtedly acted within his power as Referee when he joined the Carrier Members in denial of the claim. From the decision, however, it is very apparent that he was aware that, as Referee, he could not trench upon the rule-making power vested in the Board. Section 3 (u), The Railway Labor Act.

In Award No. 1193, the Referee, in joining the Carrier Members in requiring notice to be given to a party other than those to the dispute, did trench upon the rule-making power of the Board. Not only that, he exceeded the power conferred upon Referees by the Act, which is, "to sit with the Board as a member thereof and make an award."

However desirable a Referee may think notice to parties, other than those to the dispute, would be, he cannot order it because the Statute and Rules of the Board do not require it. The limitation of the power of Referees is epitomized in the Memorandum of the Referee attached to Award No. 902, reading:

> "Since, in my opinion, the Board has jurisdiction over the parties and power to make an award which will bind them, the question is not whether the Board may lawfully proceed to dispose of the case, but whether it ought to do so. While the rules of the Board provide for notice only to the parties, the Board could, if it wished, provide for notice to other persons who might be affected by awards. But whether the Board should do so or not is a question beyond the province of a referee. The Amended Railway Labor Act provides (U. S. C. A. Title 45, Sec. 153, First) that the Board shall 'adopt such rules as it deems necessary to control proceedings before the respective divisions * * *,' while a referee's function is 'to sit with the division as a member thereof and make an award.' "

We conclude that it is necessary to give notice of hearing only to the parties to the dispute.

This dispute presents the question of whether certain redcap service falls within the scope of the Clerks' Agreement. The claim as originally presented was very broad. As finally submitted it was restricted to the proposition that baggage room porters have the right to perform such service in the so-called "free area" at the north end of the baggage room. In other words, as we understand it, the organization now contends that baggage room porters have the right to carry baggage, which is to be, or has been, checked for transportation, to and from vehicles, parked in the free area, to the baggage room.

As we gather from the organization's presentation, the claim is predicated on two theories: (1) that the work had been **assigned** to baggage room porters; and (2) that it had been done by them over a long period of time with the knowledge and consent of the carrier. We think the organization has failed to sustain the burden of proof on both propositions. Indeed, we think the carrier has established, by a clear preponderance of the evidence, that the work was never **assigned** to baggage room porters and that such of it as they performed was done contrary to express instructions.

There is a clear line of demarcation between the functions of baggage room porters and redcap service. The latter is maintained as an accommodation to patrons of the carrier. Baggage room service is maintained under tariff requirements. The one is maintained for the assistance and comfort of the patron. The other is a necessary incident to the contractual relationship between carrier and passenger.

The function of the baggage room porter, so far as his relationship to the passenger is concerned, is to receive and deliver baggage which is to be, or has been, checked for transportation **at the counter or on the platform of the baggage room.** There is where the scope of his duties begin and end. The handling of baggage to and from there to vehicles is redcap service which does not fall within the scope of the agreement.

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, find 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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1944.