

Award No. 4539
Docket No. CL-4452

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke—Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY (Dallas, Texas)

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 carrier (The Union Terminal Company, Dallas, Texas) violated and continues to violate the agreement extant between the respective parties when on and after June 14, 1947 it failed and refused to assign Red Cap Clint Henson to service as a Red Cap six days per week; and
- (2) The carrier (The Union Terminal Company, Dallas, Texas) continues to refuse to so assign Red Cap Clint Henson; and,
- (3) The carrier (The Union Terminal Company, Dallas, Texas) shall now be required by appropriate award and order of the Board to assign Red Cap Clint Henson to service six days per week as such; and
- (4) That the said Red Cap, Clint Henson, shall be paid one day's pay in each and every week worked by him since June 14, 1947 to compensate him for the carrier's failure to assign him as provided in the Agreement rules.

EMPLOYES' STATEMENT OF FACT: Mr. Clint Henson is employed as a Red Cap by The Union Terminal Company at Dallas, Texas. His daily assigned hours of service are from 7:00 A. M. to 3:00 P. M. His employment extends from Monday through Friday of each week. On Saturday and Sunday of each week his services are utilized by the carrier in the capacity of a Train Caller, a position not covered by the Red Cap Agreement.

There are two agreements in effect between this Organization and The Union Terminal Company, Dallas, Texas. One of the agreements is dated January 1, 1940, amended April 12, 1946, and covers the craft or class of Red Caps. This is the agreement which is in issue here and which covers the employment of Red Cap Clint Henson. The other agreement extant between the respective parties is dated at Dallas, Texas, March 1, 1922, amended May 24, 1937. The last named agreement covers the craft or class of Clerks and other office and Station employees. The last named agreement is not in issue in this case.

It is the position of the carrier that it is privileged to require an employe to work interchangeably under both agreements. It is the position

that this handling is improper under the rules of the agreement, and the conduct of the parties in the past definitely shows it is considered proper. Under those circumstances there cannot be and is not any legitimate basis for complaint or claim.

Petition alleges in his letter of July 2, 1947, Carrier's Exhibit "A", attached, third paragraph, in part, as follows:

"The Carrier is laying Hynson off one day a week as a Red Cap, a thing which it has no right to do, and is requiring him to work two days in each week as a Train Caller."

The Carrier denies those allegations and submits that the handling is no different on the days Petitioner is complaining about than it is on other days Petitioner is not complaining about since October, 1943, when Clint Hynson performed extra work as Train Caller instead of his regular assignment as Red Cap.

It will be observed from copy of affidavit executed by Clinton Hynson, August 17, 1948, and furnished the Carrier by Petitioner September 28, 1948, Carrier's Exhibit "A", attached, that Clinton Hynson does not state that he has ever complained to or advised the Carrier that he did not desire to perform extra work as Train Caller, either on Saturday and Sunday of each week, or at any other time when extra Train Caller is needed, or that he has ever been denied work on his regular assignment as Red Cap. The affidavit further shows Clinton Hynson filed a grievance for additional compensation and not a grievance requesting that he be required to work on his regular assignment as Red Cap and not be permitted to accept and perform extra work as Train Caller, either on Saturday and Sunday of each week, or at any other time when extra Train Caller is needed. The affidavit was executed more than a year after the claim was originally presented to the Carrier and Petitioner's letter of July 2, 1947 in which it is alleged the Carrier is laying Hynson off one day a week as a Red Cap and requiring him to work as Train Caller. The affidavit, therefore, does not substantiate but refutes the claim and contentions of the Petitioner, as obviously under those circumstances Clint Hynson has not been denied work on his regular assignment as Red Cap, and has not been laid off one day a week and required by the Carrier to work as Train Caller, but he has simply been notified, accepted and performed extra work as Train Caller when and as such service became available, not only on Saturday and Sunday of each week, but at any and all other times.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of Carrier's failure to use Claimant Red Cap Clint Hynson (Henson), six days per week. The System Committee of the Brotherhood asks that he be paid one day's pay in each week he has worked since June 14, 1947, because thereof.

Claimant was regularly assigned as a Red Cap at Dallas, Texas. His assignment was for six days a week, Monday through Saturday, with Sunday as the day of rest. However, although Claimant was ready, able, and willing to perform his duties as a Red Cap on Saturday of each week, the Carrier assigned and required him to perform the duties of a Train Caller, a position not covered by the Red Cap's Agreement, on that day.

As of April 12, 1946, Rule 3-C of the parties' Agreement with reference to Red Caps provided, as far as here material, as follows:

"Employes (Red Caps) will be assigned to service six (6) days a week."

This six-day guarantee covers the employe and specifically secures to him the right to perform the duties to which he has been assigned as long as he is ready, able, and willing to do so. Here Claimant, by the claim he made on June 14, 1947, evidenced his claim of right to these duties on all six days that he was assigned to services as a Red Cap and Carrier, by reason thereof, became fully aware of that fact. By failing to have Claimant perform the duties of a Red Cap on Saturdays, when he asserted his right thereto, Carrier violated the provisions of the quoted part of Rule 3-C of the parties' effective Agreement.

The claim here is in the nature of a penalty against the Carrier for having violated the Agreement as Claimant has already been paid for services rendered on each Saturday, for which claim is here made, at Train Callier's rate of pay for services rendered as such during approximately the same hours as that assigned to him as a Red Cap. While penalties for violation of rules may seem harsh and there may be difficulty in seeing what right certain individuals may have to the money to be paid in a concrete case, however, experience has shown that if rules are to be effective there must be penalties imposed for the violation thereof.

We find the Carrier violated Rule 3-C of the parties' effective Agreement when it failed to have Claimant perform the services of a Red Cap on each Saturday during the hours he was regularly assigned thereto and because thereof it must pay Claimant his regular day's pay as a Red Cap on each Saturday that it failed to have him work his regular assignment as such since June 14, 1947.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.