Award No. 5395
Docket No. CL-5363

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

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

THE INDIANAPOLIS UNION RAILWAY COMPANY

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated and continues to violate its Agreement with the Brotherhood at its Union Station, Indianapolis, Indiana, when on September 1, 1949, and with recurring regularity thereafter, it arbitrarily removed and continues to remove an appreciable quantity of the Baggage and Mail Handler's work from the scope and operation of the Agreement between the parties, governing hours of service and working conditions, and assigned such work to persons from the outside and ones without established seniority and failed and refused to permit those with established seniority who were available, ready, willing and able to perform the work, to work on their designated rest days and/or on authorized overtime, and be paid for same, and

(2) That the Carrier shall now be required to compensate the regularly assigned Baggage and Mail Handlers for September 1, 2 and 6, 1949, as shown in Brotherhood Exhibit "A" attached hereto and made a part hereof, to the extent shown thereon, and

(3) That the Carrier shall now be required to compensate certain regularly assigned Baggage and Mail Handlers to the extent of 10,398½ hours, as shown in Column 3 of Brotherhood Exhibit "B" attached hereto and made a part hereof, at the penalty rate of the positions, with the further understanding that the names of the claimants shall be determined by a joint check of the payroll records for those dates shown in Brotherhood Exhibit "B", and

(4) That the Carrier shall now be required to compensate certain regularly assigned Baggage and Mail Handlers, to be determined by a joint check of the payroll records, hour for hour at the penalty rate of their positions, for all dates subsequent to May 31, 1950 on which these outsiders are used to perform the work of the Baggage and Mail Handlers work, and

(5) That the Carrier shall now be required to compensate the clerks listed in Brotherhood Exhibit "C" for eight (8) hours each at the penalty rate of the Baggage and Mail Handler position for Saturday, December 10, 1949.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in

men to total hours worked. Neither are there such records showing the dates in past years that men working on the extra board first were assigned to regular jobs, but we have produced irrefutable evidence that this is the natural move-up.

However, the general statements made herein along such lines are known to be the true facts because they come within the personal knowledge of the Superintendent in charge of the operation as a whole, and the Baggage Agent who assisted in preparing this submission, and who is in direct charge of the baggage and mail work. Both have been here for many years, and are familiar with such details for their entire period of service.

The Carrier, in conclusion, requests that the case be dismissed as not complying with the provisions of the Railway Labor Act, first, on the ground that the Employes have not properly established or substantiated their claim on the property; and secondly, that it is a request for a new rule. In the event it is not dismissed, it should be unequivocally denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier operates a Union Passenger Station, which serves all railroads entering Indianapolis upon a 24 hour, seven days a week basis. The volume of mail and baggage varies as between days of the week as well as seasonally. In addition, absences of regular force must be covered. The handling force ranges from 160 to 260 with further additions during the Christmas holiday period. Staggered five-day assignments have prevailed since the date of first claim, September 1, 1949. Carrier states that its complained-of-practice of having additional men, referred to as "extra men" by Carrier and "outsiders" or "men-from-off-the-street" by the Organization, to assist in handling the overflow work and to cover absences, has existed on this property since 1920 or before. The Agreement in effect is that of January 11, 1943, as amended on July 8, 1949. There is no express extra board rule in the current Agreement.

At page 196 of the docket the Organization agrees with Carrier's paraphrase of its claim, reading:

> "The employes took the position that although Rule 3 provides that seniority begins at the time employe's pay starts in the seniority district to which assigned, nevertheless Rule 11 provides that new employes or employes from other seniority districts filling new positions or vacancies which had not been bulletined would not be considered as establishing seniority under Rule 3."

In short, the rules must be read together as they spell out, the Organization contends, how new employes hired will establish seniority on the roster, without which they have no authority to work unless an exception be provided. Such an exception we later find exists in connection with positions of short duration which are not involved herein.

The Organization contends that Carrier's practice of assigning a seniority date to the so-called extra men as of the date of their hiring and assignment (Rule 3) is unauthorized. This by virtue of the language of Paragraph 3, Rule 11, which it contends must be read with Rule 3 and as so combined, constitutes the sole method under which new employes may receive seniority status. In short, until the job is bulletined and the employe is formally assigned, he has no seniority of work status, thus precluding the Carrier from further continuing the extra men practice.

We do not so read Rule 11. The Rule is entitled, "Short Vacancies" and by its terms would seem intended to apply solely to that subject. Paragraphs 1 and 2 excuse the necessity of bulletining when filling positions, (1) of definite duration of 30 days or less (for example, Christmas holiday jobs when service needs may call for additional employes from such dates as December 10th through December 25th), or, (2) indefinite duration but

reasonably anticipated less than 30 days (such as troop movements, large conventions, etc.). The third paragraph continues to deal with the same subject, **short vacancies**, and to identify that which went before (to avoid repetition perhaps), uses the phrase "new positions or vacancies which have not been bulletined", i. e., the class of temporary positions or those of indefinite duration but less than 30 days covered in the preceding paragraphs, which by the terms thereof need not be bulletined. As to this class of employes, the seniority status granted under Rule 3 to others is denied to them. It is not this class of employes with which we are concerned. Therefore, we do not find justification to tie Rules 3 (a) and 11, third paragraph, together so as to come up with a construction which nullifies by implication the long-established and acquiesced in practice indulged in by Carrier.

Acknowledgment of the complained-of-practice after the date of the current Agreement would seem to appear in the Memorandum of Agreement dated May 3, 1944, which refers to work which can't be taken care of by the "extra force" among others. This Agreement permits others to work after the regular and "extra forces" have had opportunity to do so. We are unconvinced by the Organization's contention that the phrase "extra force" in fact meant furloughed or unassigned employes. It would have been so easy to say so if that was what was intended.

Reference to the 1924 Agreement, specifically Rule 15A, affords further evidence of the long standing practice recognized by the Employes without protest until 1949. It was not an enabling rule, hence its omission in the later Agreement is not significant.

For the reasons stated, we find that the employes in question were properly placed under Rule 3 and in conformance with the long established hiring practices found to exist on this property.

Award 3763 of this Division is distinguishable because there definite rules had been negotiated to regulate the use of extra or additional forces and said rules were violated by the manner in which use was made of part-time workers. Similar in the case of the one-day workers subject of Award 5078. It should be noted in particular that the granting of seniority status was deferred under the rules present in the last cited case and the disputed Saturday workers could not meet the requirements of the rule.

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 Agreement between the parties was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1951.