

**Award No. 5630**

**Docket No. CL-5638**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Hubert Wyckoff, Referee**

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**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly the Scope, by the use of so-called emergency employes to perform the duties of Station Baggage men, Baggage Department, Pennsylvania Station, New York Division, New York, N.Y., January 8, 1948 to December 20, 1949, inclusive.

(b) John J. Higgins, and other Station Baggage men, be paid pay equal to that paid these emergency employes, January 8, 1948 to December 20, 1949, inclusive, as a penalty.

**EMPLOYES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class of craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

For the purpose of handling baggage, Railroad Service Mail, Company Material, and U. S. Mail at Pennsylvania Station, New York, N. Y. on its New York Division the Carrier maintains a large force of employes with title of Station Baggage man. The title is not particularly descriptive as most of the time of these employes is devoted to the handling, sorting, loading, and unloading of U. S. Mail. Since the volume of mail and baggage does fluctuate to some extent, the Carrier maintains a minimum number

Your Honorable Board should, therefore, dismiss the claims in this case.

Item (b) of this claim contains a request that "other Station Baggage-men be paid pay equal to that paid these emergency employees". The filing of a claim with this Board for "other Station Baggage-men" is highly improper. Proper consideration on the property of claims and other disputes is required by the Railway Labor Act, particularly Section 2, Second and Sixth, and is a prerequisite to the handling of claims before the National Railroad Adjustment Board in accordance with Section 3, First (i).

Rule 7-B-1 (a) of the applicable Agreement provides that claims may be presented only by an employee or by his representative on his behalf and must be presented in writing to the employee's immediate Supervisor. The filing of a claim with this Board for "other Station Baggage-men" prevents proper consideration on the property of this particular aspect of the claim. Furthermore, the phrase "other Station Baggage-men" is so vague and indefinite that it fails to give proper notice to the Carrier of the individuals involved in the claim.

The Carrier contends that the claim for "other Station Baggage-men" is improper and must be denied for it does not comply with Rule 7-B-1 (a) nor with the provisions of the Railway Labor Act.

**III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION**

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.  
(Exhibits not reproduced).

**OPINION OF BOARD:** This case involves the propriety of the use by the Carrier of emergency or curbstone forces. The Agreement (Supplemental Agreement "A", paragraph 1-B effective May 1, 1942) authorizes

their use, if they are "temporarily used for short periods of service, for which regularly assigned or extra employees are not available."

The claim was presented February 26, 1948 and it embraces a period commencing January 8, 1948 and ending December 20, 1949. The claim was denied in initial stages and finally the General Chairman of the Brotherhood and the General Manager of the Carrier appointed a Bi-Partisan Committee to investigate the situation. The results of their investigations are contained in a Report which is part of both submissions. The Report covers only the year 1948 but we take it, as the parties apparently did, as fairly representative of the entire period covered by the claim.

For the purpose of handling baggage and mail, mostly mail, at Pennsylvania Station in New York City, the Carrier maintains a force of employees with title of Station Baggage-man. During 1948 the total number of regular forces was:

Positions	Jan. through March	April	July	Oct.
7-day	603	-----	8	310
6-day	323	-----	-----	-----
Relief	103	-----	-----	-----
Extra	115	89	-----	-----
Total	1144	1233	1241	1551

During the same period the Carrier employed a total of 24,009 curbstone forces ranging from none in June and July to 4,902 in September (38,091 hours) and 7,081 in December (56,320 hours); and they worked a total of 189,827 hours, or an average of 15,852 hours per month. During the same period the regular forces worked overtime hours ranging from 11,660 in June to 56,467 in September and 17,891 in December; and they worked a total of 281,493 overtime hours, or an average of 23,458 hours per month. For the regular forces this amounted to approximate average overtime earnings per man of \$378.38 (214 hours) per year or \$31.50 (17.8 hours) per month.

On January 8, 1948, which was agreed to be a fair sample day, 54 curbstone employees worked a total of 432 hours or an average of 8 hours per man; and 149 regular employees worked a total of 577 overtime hours or an average of about 4 hours per man.

With respect to the frequency or regularity of the use of curbstone forces, the Report shows their use during all months of the year except June and July with a range from 5 days during May to 26 days during March, September and December and an average use of 15.5 days per month.

The Report indicates the days when the Carrier posted on the bulletin board "Notice of Overtime" and "Notice of Cancelled Relief Day"; and it also indicates the tours of duty to which the notices were to apply. Apart from these notices and a statement that it was "the practice to permit employees assigned on the preceding tour to work overtime", no other method of offering this work to the regular forces is disclosed by the Report.

The Carrier claims however that other means were used, such as telephoning etc.; but there is no showing that such means were either systematic or extensive. The Carrier further claims that the record of the dates when notices were posted on the bulletin board is incomplete; and that the Report does not take account of notices which were lost or destroyed. It would seem that these notices would have been an object of the Carrier's special solicitude what with the claim pending from February 26, 1948.

We accept the Report as showing the full extent to which the Carrier offered this work to the regular forces.

**FIRST:** The Curbstone Rule puts the seal of recognition on the necessity for the use of these emergency forces. And the Report indicates that the high volume of this work is apparently not concentrated in any par-

ticular month: September was the high month with December and March next in order.

Thus, with volume fluctuating, the anticipation of what working forces would be necessary from day to day was not capable of exact determination.

But the leeway given to the Carrier by the Rule is conditional. It is conditioned upon the non-availability of regularly assigned or extra employees and also upon the temporary use of curbstone forces for short periods of service.

**SECOND:** As we view the Rule and the record, it is difficult to conclude that the use made of the curbstone forces was either "temporary" or "for short periods of service." Except for June and July, May comprised the lowest number of hours worked by the curbstone forces; the total of these hours during May amounted to the total regular monthly hours of eleven regular positions; the average monthly hours worked by the curbstone forces amounted to the total regular monthly hours of 91 regular positions; and the Carrier is entitled under Rule 3-C-1(e) to abolish positions upon 36 hours' notice.

Emergencies cease to be emergencies and take on the attributes of routine when they recur 20 days and more each month for six months of a year and involve the substantial number of hours shown here for each of ten months of a year.

**THIRD:** The essential issue is whether regularly assigned or extra employees were available when the curbstone forces were worked. Apart from conflicting assertions of general availability and general non-availability in the record, the best evidence and the only specific evidence at hand is to be found in the Report, which shows the days when notices were posted by the Carrier and the days when curbstone forces were used.

There is a perceptible correlation between the frequency or infrequency of the notices and the number of curbstone employees used. Thus, when the greatest number of notices was given as in January, February, March, May, August and September, the overtime hours worked by the regular forces greatly exceeded the hours worked by the curbstone forces; and when the least number of notices was given as in October, November and December, the hours worked by the curbstone forces in November almost equalled, and in October and December greatly exceeded, the overtime hours worked by the regular forces; and when the greatest number of notices was given, the overtime hours worked by the regular forces greatly exceeded the overtime hours worked by them when the least number of notices was given. The pendency of this claim since February 26, 1948 put the Carrier on notice that the regular forces desired and claimed this work. The inference is irresistible that regular forces were available when curbstone forces were used and that more notices would have developed more availability.

In view of the foregoing considerations, the award should be as follows:

1. the regular forces, in the order of their seniority, who were available on days

(a) when emergency or curbstone forces were used and

(b) when no notice was posted on the bulletin board  
are entitled to compensation at the pro rata rate (except for penalty days which should be compensated on the punitive basis) for the number of hours less than 16 (see Award 5347) that they were not worked;

2. the aggregate hours for which compensation should be paid for each of such days should not exceed the aggregate hours worked by the emergency or curbstone forces that day; and

3. regular employees who failed to double over when others on their tour did should be treated as not available that day.

**FOURTH:** The claim, paragraph (b), is presented on behalf of "John J. Higgins and other station baggagemen."

The Carrier contends that a general claim such as this is too broad; that each claimant should be named; and that unless each claimant sustains a burden of showing his availability on specific dates, the claim should be denied.

This Board has sometimes sustained, and sometimes denied general claims, mainly for the reasons stated in Award 4821. General claims have been denied when they are so broad and indefinite that the claimants cannot be readily ascertained or when the relief asked does not operate uniformly upon the members of the class (Awards 1629, 2125, 4372, 5150, 5384 and 5562). General claims have also been denied when only a named claimant or specific claim was dealt with on the property (Awards 906, 2099 and 5116). On the other hand, this Board has sustained numerous general claims, often remanding the claim to the property for further handling if there be a fact issue as to each employee (Awards 4291, 4292, 3251, 4821, 5078 and 5107).

This claim was handled on the property on a general basis. No objection to the generality of the claim was made by the Carrier on the property; and indeed the Bi-Partisan Committee that developed the facts did not address itself to John J. Higgins but rather to all the Station Baggage-men at the Pennsylvania Station en masse.

Whatever burden of proof lies on the Brotherhood was sustained by the evidence contained in the Report of the Bi-Partisan Committee.

**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 Agreement was violated as found above.

#### AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1952.