Award No. 5923
Docket No. CL-5895

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Clerks' Agreement when it changed the assigned starting time of certain employes of the Mail and Baggage Department at 12th Street Station, Chicago, Illinois, effective February 6, 1949, and

2. Messrs. W. Gulick, B. Espanosa, H. Grossenbacker and J. Hardy be compensated for one hour per day at penalty rate, account starting time changed from 3:30 P. M. to 5:00 P. M. effective February 6, 1949 and to continue until violation ceased, February 9, 1951.

3. Messrs. J. Malone, J. Hoeffelt, P. Schreck and E. Kasnia be compensated for two hours per day, at penalty rate, account starting time changed from 6:00 A. M to 4:00 A. M., effective February 6, 1949 and to continue until violation ceased February 9, 1951.

4. Mr. F. Woodbury be compensated for one half hour per day, at penalty rate, account starting time changed from 6:00 A. M. to 5:30 A. M. effective February 6, 1949, and to continue until violation ceased February 9, 1951.

5. Any other employes affected by a starting time change in this department, in violation of the Clerks' Agreement, be compensated in like manner.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains a Mail and Baggage Department in their Chicago Terminal Division at Chicago, Illinois. This seniority district covers 12th Street, Randolph Street, 63rd Street and Kensington in Chicago, and Harvey a suburb of Chicago. Central Station (12th Street) employs the greatest part of the force and it is this location that we are concerned about in the instant case.

In our current rules Agreement we have the following Rule 36 covering three shift positions:

"Where three consecutive shifts are worked covering the twenty-four (24) hour period the starting time of each shift will

based upon individual claims in order that both sides might know exactly what is involved."

Carrier contends that the agreement has not been violated and requests your Board to deny the claim.

All data in this submission have been presented to the Employes in conference or correspondence and are made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintains a Mail and Baggage Department in its Chicago Terminal Division under the direct supervision of F. G. Neuman, Mail and Baggage Agent. This is one Seniority District and covers several locations within the Chicago area. However, the only location involved in this dispute is the one described in Carrier's submission, embracing mail platforms between Twelfth and Fourteenth Streets, the baggage room immediately to the north and the passenger depot, all such facilities being connected by openings and forming what is known and commonly referred to as Central Station. This opinion is limited to such location and whatever decision is reached as to the merits of the cause will only affect employes assigned to positions connected therewith.

This case is unusual in that the parties are in complete accord as to the following:

First, it is admitted the controlling rule is Rule 36 of the Current Agreement which reads:

> "Where three consecutive shifts are worked covering the twenty-four (24) hour period the starting time of each shift will be between the hours of six and eight A. M., two and four P. M., and ten P. M. and midnight."

Second, it is conceded that in applying Rule 36 to the facts of the instant case the proper construction of and the force and effect to be given its terms is that outlined in our Award 5791 where it is said:

> "We think the Committee's construction of the language used is too broad and the Carrier's too narrow. The subject matter of the rule is 'Three Shift Positions' and the rule relates to the class of work performed upon that basis. When, at any point or location, a class of work is performed on that basis all positions performing that class of work come within the provisions thereof regardless of whether there are more positions on one shift thereof than on another. But that does not mean that positions performing other classes of work at such point or location, but coming under the Agreement, are restricted by the rule. It is only when the work of the position comes within the class that is being done on a three consecutive shift basis does the midnight to 5:00 A. M. starting restriction of Rule apply thereto.
>
> "In view of the factual situation involved therein, the rule being the same, the following language of Award 1395 of this Division is to like effect. Therein it was stated: 'That (the rule) means that neither any one of the existing shifts, nor any shift additional thereto, will have a starting time within the prohibited period of 5 hours.' "

Third, it is agreed that under the facts of record and the controlling rule the all decisive issue, indeed the only question presented for our decision, is whether a class of work was performed on an around-the-clock or 24 hour basis at the location heretofore identified on February 6, 1949, the date on which the starting time of employes, described in the claim, was changed to hours different than those prescribed by the provisions of Rule 36.

Thus it becomes crystal clear our decision of the sole issue involved is wholly dependent upon the facts and that if upon careful review, consideration, and analysis they compel a conclusion that on the date of the changes in starting time in question the activities at the Central Station location were regarded, and hence properly to be considered, as one service unit it is our duty to sustain the claim, otherwise to deny it.

The positions of the respective parties on the issue are so obvious they scarcely require mention. However, in the interest of clarity it should perhaps be stated the Organization contends the involved operations at Central Station were operated as one service unit while the Carrier insists mail and baggage activities were carried on as separate and distinct operations.

Nothing would be gained and it would only unduly encumber this opinion to detail the facts, outline the respective versions of the parties regarding them, or attempt to list herein the changes made in starting time of individual employes. Besides, all of those matters are set forth at length and can be found in the record and submissions of the parties which precede such opinion.

It suffices to say that after a careful review and analysis of all the important facts of record we are constrained to hold the Organization has established by the preponderance of evidence necessary to sustain its position that on February 6, 1949, the date of the change in starting time giving rise to this dispute the Carrier was operating its Mail and Baggage Department at Central Station as one service unit on an around-the-clock or 24 hour basis. Indeed the record discloses that subsequent to that date on May 2, 1949, F. G. Neuman, Carrier's baggage and mail agent, supervisor of all mail and baggage employes, for whom it must assume responsibility, gave written notice to all mail and baggage employes concerned as follows:

> "Effective at once, mail foremen will have jurisdiction over baggage employes as well as mail employes, and baggage foremen will have the same supervision over mail platform employes as the baggage employes.
>
> "These employes will be expected to handle both mail and baggage from time to time."

It further appears from the record that as late as June 22, 1949, more than two months after the filing of the instant claim this same supervisory official by letter, written to the Organization's local chairman, said:

> "Yours June 18, in connection with Mr. Meyer working in the Baggage Department June 16.
>
> "As you are aware, this is all one department, and if we feel it is necessary to use a man from the mail platform to assist in the baggage room, we may do so. Mr. Meyer is on a six-day assignment and should work any place he is needed."

Moreover, the same source discloses that on February 9, 1951, after it appeared this claim was being pressed and would finally be progressed to this Division of the Board this very claimed violation was terminated by the Carrier and thereafter employes involved in this dispute were assigned starting time, as before.

In the light of the foregoing facts, and numerous others which we have not mentioned specifically, it is asking too much of this Board to hold, as Carrier would have us do, that it was maintaining its Mail and Baggage Department at Central Station as two separate and distinct operational activities and we refuse to do so. The result is the Organization's claim Carrier violated Rule 36 of the Agreement by its action in changing starting time of the employes specifically named therein must be sustained.

There is little merit to contentions advanced by Carrier to the effect the name of E. Kasnia, appearing in Claim 3, was not specifically mentioned on the property and that Claim 5 for "other employes affected" is too broad and therefore not entitled to consideration. The Claim denied on the property included such employes. The short and simple answer to these contentions is that this Board has repeatedly held the fact a claim is general and fails to name the Claimants except as a class is not a bar to its disposition. For our decisions supporting this conclusion and giving the reasons responsible therefore see Awards 3256, 3687, 3763, 4821, 5107, 5117 and 5755.

Based on the record it appears the Claimants named in Claims 2, 3 and 4 are entitled to pay for the specific time therein claimed. However, since those periods of time were not actually worked Claimants are not entitled to reparation at the punitive or overtime rate. Under the well established rule (see Award 3193 and 5444) their recovery should be and it is limited to the pro rata rate.

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 Carrier violated the Agreement.

AWARD

Claims 1, 2, 3, 4 and 5 sustained with reparation limited to the pro rata rate as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of September, 1952.