

Award No. 5955

Docket No. CL-5699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

CHICAGO UNION STATION COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment of the Brotherhood that Carrier violated rules of our Agreement:

(1) When on May 24 and 25, 1950 it arbitrarily removed H. B. Dreier from his regular assigned position as Marker to another regularly established position of Dispatcher.

(2) That Mr. Dreier be additionally paid for the two days service performed at the rate of pay attached to the Dispatcher's position in addition to the amount he has already been paid for services on his regularly assigned position as Marker.

Rate of pay attached to Marker's position is \$11.984 per day;
rate of pay attached to Dispatcher's position is \$11.984 per day.

EMPLOYES' STATEMENT OF FACTS: A. The operation of handling the mail in this terminal includes several different types of duties of the employees. Prior to 1947 practically all positions except Tractor Operators were bulletined simply as Mail Handlers. This was not satisfactory to the employees because it did not give them an opportunity to choose the position or location they individually preferred. To correct that situation, notice was served on Management on December 11, 1946, asking for an adjustment in rates and reclassification of certain positions in the mail terminal. It was ultimately necessary to invoke the services of the Mediation Board under provisions of the Railway Labor Act. An agreement was reached on December 2, 1947, known as Mediation Case No. 2649, which adjusted certain rates of pay and established new classifications of Dispatchers, Callers, Markers and Storagemen, effective January 1, 1948.

B. July 1, 1948, Carrier bulletined position of Marker to which definite duties were assigned as evidenced by Bulletin 1205. (Employees' Exhibit 1)

The Claimant, Mr. Dreier, was awarded this position by Bulletin 1205A, effective July 9, 1948. (Employees' Exhibit 2)

C. Following termination of a force reduction that Carrier instituted as a result of labor troubles with engine service employees, Carrier, by an agreement with the Brotherhood, arranged for bulletining the reestablished positions in the baggage and mail department of the Carrier as evidenced by General Baggage and Mail Agent Hunter's letter dated May 16, 1950. (Employees' Exhibit 3)

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.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is concerned with a claim of the System Board of Adjustment filed on behalf of H. B. Dreier who had a regularly assigned position as Marker awarded him in accordance with the seniority provision of the effective Agreement.

There is no serious disagreement between the parties with respect to the basic facts involved in this case. On or about May 19, 1950 one R. L. Everett was awarded a tractor operator position. This resulted in a vacancy in his former position of mail dispatcher. This vacancy was advertised in the usual way on May 20, 1950, and finally assigned to David Zaret on May 26, 1950. Zaret's regular assignment was that of mail handler on Friday, Saturday and Sunday, and relief dispatcher on Monday and Tuesday with rest days on Wednesday and Thursday. When the mail dispatcher's position became vacant on May 20 Zaret was assigned to fill that position temporarily and did so on Sunday, May 21, Monday, May 22, and Tuesday, May 23.

On May 24 and 25 Claimant Dreier, a Mail Marker, was designated by Management to perform the duties of mail dispatcher. On the following day, May 26, the position of mail dispatcher, having been duly bulletined, was formally awarded to Zaret.

The Petitioner contends that when the Carrier designated Claimant Dreier to perform the mail dispatcher's job on the 24th and the 25th he was being required to suspend work on his own position in order to absorb overtime which Zaret would have otherwise worked. Hence Rule 42 of the effective Agreement was being violated.

The Carrier asserts that its action in using Dreier on these days as a mail dispatcher was not for the purpose of absorbing overtime. Furthermore, the Carrier contends that under Rules 10 and 11, and in accordance with the Rule governing extra boards, the Carrier was privileged to take the action which it did.

It does not appear that the situation involved on the dates in question can be regarded as an emergency, as argued by the Carrier. However Rule 10 does provide that bulletined positions may be filled temporarily pending a regular assignment of the job.

The Rule for establishing extra boards provides in part as follows:

"* * * Where the regular force is rearranged so as to competently fill vacancies, the position finally made vacant by such temporary arrangement will be filled from the extra board."

These two rules considered together appear to give some discretion in the making of temporary rearrangements in the work force. In the instant situation an extra board man was used to fill the mail marker's job temporarily.

In its presentation the Petitioner cites several other employees whom it contends could have been put on the mail dispatcher's job without violating Rule 42. If as Petitioner admits, this was true, it was equally true for Dreier. In view of these particular facts and in view of the cited rules an affirmative award cannot be justified in this case.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1952.