

Award No. 8224  
Docket No. CL-7772

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Howard A. Johnson, 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, except as amended, particularly the Scope, Rules 3-A-1 (a) and (c), 5-C-1, and Extra List Agreement No. 2 covering Group 2 employees in the Passenger Station, Baggage Department, Harrisburg, Pennsylvania, Philadelphia Division, by using curbstone or emergency employees to augment the Group 2 Extra List during the period November 20, 1953 to December 25, 1953.

(b) Station Baggage men H. C. Rabuck, A. F. Bowman, Jr., and C. E. Sonft, and 249 other named Claimants, should each be allowed eight hours' pay, for each day from November 20, 1953 to December 25, 1953, inclusive, on which the number of employees assigned to the Group 2 Extra List exceeded eighty, as a penalty. (Docket E-968.)

**EMPLOYEES' 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 or craft of employees in which the Claimants in this case hold positions 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, except as amended, 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.

All the Claimants in this case are assigned in the Baggage Department, Passenger Station, Harrisburg, Penna., Philadelphia Division, and have seniority dates on the seniority roster of the Philadelphia Division in Group 2.

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 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 claims of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 such action.

### CONCLUSION

The Carrier has shown that the Carrier did not violate the applicable Agreement when it increased the extra list of Station Baggage men at the Baggage Department, Harrisburg Passenger Station, during the period November 20 to December 25, 1953, inclusive, and the claim should be denied.

It is respectfully submitted, therefore, that the claim is not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claim is that the Carrier violated the Rules Agreement, particularly the Scope Rule, Rules 3-A-1 (a) and (c), 5-C-1, and Extra List Agreement No. 2 covering Group 2 employees in the Baggage Department of the Harrisburg Passenger Station "by using curbstone or emergency employees to augment the Group 2 Extra List" in the Christmas mail rush during the thirty-six day period from November 20 to December 25, 1953, inclusive; and that as a penalty each of 252 employees should be allowed thirty-six days' regular pay.

5-C-1 provides: "Where extra employees are used extra boards will be established by agreement between the Management and the Division Chairman. The number of extra employees to be used and the manner in which they will work will be determined by written agreement between the Management and the Division Chairman."

Accordingly, the Division Chairman and the Superintendent of the Philadelphia Division on October 8, 1952, adopted Extra List Agreement No. 2, providing in part as follows:

"(1) An extra list of Group 2 employees will be maintained with headquarters at Harrisburg Baggage Room to protect extra work and vacancies on regular assignments of Station Baggage men at Harrisburg Passenger Station.

"(2) Assignment to positions on this extra list will be subject to the provisions of Rules 2-A-1, 2-A-2, 2-A-3, 2-A-4, 2-A-6, 2-A-7, 2-A-8, 3-C-1 and 3-C-3 of the Schedule Agreement.

"(3) The initial number of positions to be established on this extra list is eighty. Employees now assigned to extra list will be established on new list in order of standing when Agreement is made effective. Subsequently on the first Wednesday of each month the number of positions will be adjusted by agreement between the Super-

intendent and Division Chairman, based on the number of eight hour tours worked by extra employes during the previous calendar month, the list to be adjusted so as to establish an average of not less than 15 or more than 21 days per month per assignment.

"The number of assignments on the extra list may be increased or decreased at more frequent intervals by agreement between the Division Chairman and the Superintendent when changed conditions warrant such action.

"Information as to the number of days worked by employes from this extra list in each calendar month will be made available to the Division Chairman.

"(4) Reductions in the number of assignments on this extra list will be made by abolishing the assignments of the junior employes.

"(5) The extra list will be under the supervision of the Supervisor of Mail & Baggage, Harrisburg and employes taking assignments thereon will furnish the Supervisor Mail and Baggage with telephone number for use in notifying them when their services are required.

" \* \* \*

"(10) A list of employes assigned to this extra list, prepared in seniority order and showing roster number shall be posted on bulletin board at Harrisburg Baggage Room monthly and three copies furnished the Division Chairman.

"(11) This agreement supersedes previous agreements and practices relating to the handling of extra work at Harrisburg Baggage Room and shall become effective as of October 15, 1952."

The preamble of the Extra List Agreement stated that it was adopted "in order to establish a basis for handling extra work accruing to Group 2 employes at Harrisburg Passenger Station, Baggage Department, \* \* \* in compliance with Rule 5-C-1."

The adjustment on the first Wednesday of each month was to be "based on the number of eight hour tours worked by extra employes during the previous calendar month, the list to be adjusted so as to establish an average of not less than 15 nor more than 21 days per month per assignment." The number on the list was to be changed "at more frequent intervals \* \* \* when changed conditions warrant such action" not necessarily on the basis of the prior month's record, which obviously would be no suitable measure of such changed conditions as during the Christmas rush.

It seems clear from paragraph (3) that the general measure of the number on the list was to be one position for each 15 to 21 days of work per month, or about the statutory forty hours per week, although it was not expressly stated that the adjustments at more frequent intervals than one month should be on that basis.

The complaint is that the Carrier unilaterally increased the number in violation of the Extra List Agreement. The Carrier's defense is that it repeatedly requested the Division Chairman to agree upon a number adequate to handle the Christmas rush, but that he would not agree because it would deprive regular employes of overtime.

The Employees' Statement of Facts includes the following allegations:

" \* \* \* No agreement was made between the Superintendent and Division Chairman to increase the number of extra positions or extra employes assigned to the Extra List, during the period of this claim.

"Commencing November 20, 1953, the Carrier arbitrarily increased the number of employees assigned to the Extra List, and from this time until December 25, 1953, the number of employees assigned to the Extra List varied from 82 to 208. This increase was accomplished by the Carrier hiring 128 individuals and assigning them to the Extra List."

In their statement of "Position of Employees" they say:

"Prior to the 1953 Christmas holiday period, the Division Chairman attended a number of conferences with the Supervising Agent and the Supervisor of Mail and Baggage in an effort to obtain a memorandum of understanding covering the handling of the heavy Christmas mail traffic at the Harrisburg Passenger Station. These conferences were fruitless because the Carrier refused to enter into any kind of an understanding that would comply with the Scope Rule or Extra List Agreement No. 2. The Carrier refused to entertain any thought other than its own proposal to hire curbstone or emergency help for the handling of the increased amount of Christmas mail. This proposal was not in accordance with past practices, understandings of previous years, the Scope Rule, or the Extra List Agreement; therefore, the Division Chairman could not concur. At no time did the Carrier suggest any change in the Extra List Agreement, particularly Item No. 3."

Thus they deny that any change was requested "in the Extra List Agreement" itself. But they admit that some proposal was made by saying that "the Division Chairman could not concur" in "this proposal," because "it was not in accordance with past practices, understandings of previous years, the Scope Rule, or the Extra List Agreement." What the proposals could have related to other than the number of extra men is not apparent.

The affidavit of C. M. Springer, Supervisor of Mail and Baggage at Harrisburg Station, under whose supervision the extra list was expressly placed by section (5) of the Extra List Agreement, states as follows:

"In November and December, 1953 I was Supervisor of Mail and Baggage at Harrisburg Passenger Station.

"Due to the increased volume of work and the increased number of regular positions necessary at this location in the handling of Christmas mail the number of men on the extra list was insufficient. The existing list was insufficient because of the increased number of regular positions, with resulting need for extra men to fill vacancies in those positions, the increased volume of irregular extra work, and high absenteeism among the employees assigned to the extra list.

"On numerous occasions during this period, with a frequency which I estimate at at least twice a week, I requested Mr. John Kind, Division Chairman, Brotherhood of Railway and Steamship Clerks, to agree to an increase in the number of extra men. The Division Chairman consistently refused to agree to any increase."

This is confirmed by the affidavit of J. H. Dietrich, Supervising Agent on the Philadelphia Division, whose jurisdiction includes the Baggage Department at Harrisburg, and who states:

"On numerous occasions during October, November and December, 1953, I met with John Kind, Division Chairman, Brotherhood of Railway and Steamship Clerks, and requested that he agree to an increase in the number of extra men in the Baggage Room at Harrisburg, but on each occasion the Division Chairman rejected our request and refused to agree to any increase. I have record in my personal memorandum book for the year 1953, of two specific dates

wherein meetings were set up in my office, November 20 and 24, 1953 and this record shows the following present at each meeting:

J. H. Dietrich—Supervising Agent  
C. M. Springer—Supervisor, Mail and Baggage  
J. F. Good—Supervisor of Personnel  
John Kind—Division Chairman, B. of Ry. & S.S. Clerks  
G. M. McLaughlin—President, Local Lodge, B. of Ry. & S.S. Clerks.

"At these particular meetings the Division Chairman likewise rejected our request to increase the extra list at this location."

These statements are not controverted by the record. On the other hand, they are in effect confirmed by the statement in "Position of Employees" that the Carrier's proposal at the conferences "was not in accord with past practices, understandings of previous years," and by the statement in the Employees' Rebuttal Brief that: "It has been the practice at this location for a number of years for the Carrier to set up arrangements prior to the Christmas holiday season for the use of the existing regular and extra force of station baggagemen to work overtime before the use of 'outsiders' or employees who were hired simply for the Christmas season."

The record thus shows without question that there was an attempt by the Carrier to have the number of employees on the extra list increased to meet the seasonal demands, and that the change was refused because the request was not in accord with the prior practice "of station baggagemen to work overtime before the use of 'outsiders' or employees who were hired simply for the Christmas season."

Since by the express terms of the Extra List Agreement (Section 11) it "supersedes previous agreements and practices relating to the handling of extra work at Harrisburg Baggage Room", obviously the refusal based upon prior practice was unjustified.

The statement is made in the Employees' Rebuttal Brief that "the Carrier has produced no evidence of a **written** proposal on its part to increase the number of positions on the extra list, or of a **written** denial on the part of the Division Chairman." (Emphasis added.)

There is no requirement that the proposal or its denial be in writing. The Employees cite the provision in 5-C-1 of the Agreement that "the number of extra employees to be used \* \* \* will be determined by written agreement between the Management and the Division Chairman". The original number of 80 is so determined by Extra List Agreement No. 2, and the changes should likewise be so determined. But there is no requirement that the negotiations for such changes shall be in writing.

The Carrier contends that it did not use curbstone or emergency employees because it bulletined the additional provisions on the extra list. There appears to have been a real attempt to comply with the Agreements under the circumstances.

The contention is made that the Employees' attitude could not justify the Carrier's unilateral action. Yet it was the Carrier's obligation to the public to handle the Christmas mail, and under the circumstances the record does not suggest how it could have acted much differently.

Furthermore, the questions before this Board are not only whether the Carrier's unilateral action was justified under the circumstances, but also whether its action was so outrageous as to justify a penalty of 9072 days' pay at about \$14.00 per day, or \$127,000.00.

Under the circumstances, the Carrier's unilateral action was necessitated by the Employees' refusal to comply with Extra List Agreement No. 2. Thus the latter are in no position to complain, or to seek even a reasonable penalty.

**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 Carrier did not violate the Agreement.

**AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1958.