

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Martin I. Rose, Referee**

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**PARTIES TO DISPUTE:**

**UNITED TRANSPORT SERVICE EMPLOYES**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** The Southern Pacific Company violated and continues to violate Rules 2, 3, 9, 10, 20 and paragraph c of the Memorandum of Agreement of June 25, 1937, when on May 30, 1956, jobs Nos. 26, 27, 28, 29, 115, 116, 119, 120, 122 and 123 were abolished and reestablished as new assignments at San Francisco, Third Street Station.

We request that the Southern Pacific Company comply immediately with the agreement by establishing the assignments involved as they were just prior to May 30, 1956, and further, that the incumbents of the above assignments and all others effected, be paid all time lost by reason of said violations.

**EMPLOYEES' STATEMENT OF FACTS:** There is in effect an agreement effective February 16, 1940, which also contains an appendix of various memorandum agreements prior to February 1, 1940. These agreements have been filed by the Carrier with the National Mediation Board & National Railroad Adjustment Board in accordance with Section 5, 3(e) of the Railway Labor Act, amended. These rule agreements will be considered a part of this statement of fact. Some rules thereof may be referred to herein from time to time without quoting them entirely.

On May 30, 1956 there was in existence at the Southern Pacific Company, Third Street Station, San Francisco, fifteen eight-hour per day red cap station porter assignments. Two of these assignments were of eight consecutive hours as contemplated in Rule 2(a) and the remaining assignments, thirteen in number, consisted of eight hours actual time on duty within a spread of thirteen hours, as contemplated in Rule 2 (b).

The assignments were identified as jobs Nos. 13, 14, 23, 24, 25, 26, 27, 28, 29, 115, 116, 119, 120, 122 and 123. Prior to May 30, 1956, when vacancies existed in any of these assignments, they were bulletined as eight-hour assignments as is required by Rule 9. It is to be noted that only eight-hour full time assignments and/or vacancies are required to be bulletined.

The following notice was posted and reads as follows:

otherwise, they may be staggered in accordance with the Company's operational requirements. The Company shall not be obligated to fill a position on the off days here provided, this being recognized as a prerogative of the Company.

"Employees covered by this Rule worked more than five (5) days in a work week on positions mentioned in the preceding paragraph shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list."

Clearly, no portion of any of the foregoing rules requires carrier to maintain at any point a specific number of assignments, regardless of classification.

The memorandum of agreement dated June 25, 1937, to which petitioner makes reference in support of this claim is reproduced in its entirety and attached as Carrier's Exhibit "C". Paragraph C of that Memorandum referred to specifically, reads:

"(c) At Los Angeles twenty-four (24) full-time assignment positions at established rate of \$2.42 per day will be created; at San Francisco (3rd Street) four (4) additional full time assignment positions at established rate of \$2.62 per day will be created."

There again it cannot be held that the employees represented by petitioner are guaranteed by that paragraph a specific number of full-time (8 hours) positions. Obviously that paragraph provides for four additional full time positions at the Third Street Station in circumstances existing in June, 1937; however, there is no guarantee that those four positions or any positions, for that matter, are thereafter to be maintained for a given period of time.

It is apparent that this is purely an instance where petitioner is attempting to secure from this Division a new rule which will guarantee to the employees it represents a given number of full-time red cap station porter assignments at carrier's Third Street Station. Neither the agreement provisions petitioner has referred to in support of this claim while handling on the property, nor any other provision of the current agreement or other authority now so provide. This Division has often held that it is not its function to write new rules and has consistently declined to do so.

The rearrangement of its red cap station porter positions at its Third Street Station, effective May 31, 1956, was purely a managerial prerogative exercised by carrier in the interest of efficient and economical operation of its business. In no manner did such rearrangement conflict with any provision of the current agreement.

If not dismissed for reasons set forth in the opening paragraph of carrier's position in this submission, carrier requests, unwarranted and totally lacking in merit as it is, that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts which resulted in this claim are not in dispute. Prior to May 30, 1956, there existed fifteen eight hour per day

red cap porter positions at the Carrier's San Francisco, Third Street station. Two of these positions were of eight consecutive hours and the remainder were intermittent eight hour positions. The positions were assigned five days per week with two consecutive rest days.

On May 30, 1956, the Carrier abolished ten of the intermittent eight-hour per day positions and on May 31, 1956, established ten red cap porter positions of six hours per day, seven days per week. Effective July 2, 1956, the Carrier abolished these ten six-hour per day positions and established ten eight-hour per day red cap positions, five days per week, of which nine were of intermittent service. This action of the Carrier terminated the claim.

Carrier defends against the claim on the basis that the abolishment of the ten eight-hour per day positions and the establishment of the ten six hour positions was a rearrangement of such positions pursuant to its managerial prerogative and Rule 2(d) of the applicable Agreement which provides that "Part time employes may be regularly assigned . . . to take care of peak service requirements . . ."

The record discloses that after the rearrangement of the positions their assigned hours were substantially the same as before except that they were reduced two hours per day and were assigned seven days per week. There is no evidence in the record to show that the rearrangement of the positions was "to take care of peak service requirements" as provided under Rule 2(d) asserted by the Carrier in justification of its actions. In the absence of such evidence, there remained applicable Rule 2(b) which provides in respect to full time intermittent positions that eight hours "actual time on duty within a spread of thirteen (13) hours shall constitute a day's work." In view of Carrier's action effective July 2, 1956, no question of reestablishing positions is presented.

We find no merit in the objection that the Claimants and their losses were not identified, except insofar as the claim seeks recovery for "all others effected." See Awards 6262, 8526, 9248. The record shows the job numbers of the positions involved and the relevant dates. The incumbents of those positions can readily be identified and their losses ascertained, and there is no contention to the contrary. However, there is nothing in the record to support a claim for "all others effected."

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

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 was violated to the extent indicated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.