

Award No. 11154

Docket No. CL-10666

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

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 Article 10(b) of the Vacation Agreement dated December 17, 1941, and Article 1, Section 6, of the Agreement of August 21, 1954, at the Passenger Station, Fort Wayne, Indiana, Northwestern Region, when it blanked the position of Baggage and Mail Handler J. H. Pitts on one day during the vacation period of the incumbent.

(b) The Claimant, B. R. Hill, Extra Baggage and Mail Handler at Fort Wayne Passenger Station, should be allowed eight hours pay for Saturday, October 20, 1956. (Docket 204)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the class or 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 Employes 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.

On the date of this claim the Claimant, B. R. Hill, was assigned to the Group 2 Extra List at the Passenger Station, Fort Wayne, Indiana, Northwestern Region. He has a seniority date on the seniority roster of the Northwestern Region in Group 2.

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 and 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 Employes 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 in blanking the position held by J. H. Pitts on October 20, 1956, one of the ten days he was on vacation, no violation of the Rules Agreement, the Vacation Agreement of December 17, 1941 or the August 21, 1954 Agreement occurred and that the Employes have failed to present any proof whatever to the contrary.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, 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 employee involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The record here shows that during the period between October 9, and October 20, 1956, a regular assigned Baggage and Mail Handler, at Fort Wayne Passenger Station, was on his vacation, as prescribed by the Agreement between the parties hereto. The assignment here covered the hours 9:00 P. M. to 5:00 A. M., Tuesday through Saturday.

During the vacation period between October 9 and through the 19th, Carrier filled the vacationing employes assignment, by the use of employes, taken from Extra List, who filled the vacancy and performed all the work required for the first nine days of the incumbents vacation period. On October 20th, the position was blanked by Carrier, and the work required was performed by other employes during their regular assignments on the one day the position was blanked.

The Organization contends that Carrier violated the provisions of Agreement No. 6, effective March 1, 1955, pertaining to Extra List for Group 2 Employes. In addition they contend that Carrier violated the provisions of Article 10 (b) of the Vacation Agreement, and Article 1, Section 6, of the August 21, 1954 Agreement. The reason of such action by Carrier, in blanking the position on October 20, 1956, resulted in increasing the work burden of other employes remaining on the job, and to relieve Carrier of the expense of using a relief worker to perform the service required for one day.

Carrier denies the contentions of the Organization, and states, that no extra burden was placed upon the employes work load on the day in question, and it has shown that the work load of the position on this day on account of the Baggage and Mail was less than usual, and in the opinion of the Agent, the remaining work to be performed, could be accomplished by other employes on duty, and who could absorb such extra work, without hardship.

The record does not show that any extra burden was put upon the employes on the day involved here, to do the work required.

In reference to an alleged violation of Article 10(b), of the National Vacation Agreement, by Carrier, we are of the opinion that it did not violate the Agreement. See Award No. 10758.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.