Award No. 12375
Docket No. CL-12063

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD — GRAND CENTRAL TERMINAL

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

(1) That Carrier violated and continues to violate the terms of the Agreement between the parties when it refused and refuses to compensate daily rated employes of the Baggage Department at Grand Central Terminal, New York City, under the provisions of Rule 34, Paragraphs (b) and (d) of the Agreement between the New York Central Railroad Company–Grand Central Terminal and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

(2) That the claimants listed herein shall be compensated for eight (8) hours at the pro rata rate for each day in which their work weeks were reduced below five (5) days per week as a consequence of Carrier's violation.

EMPLOYES' STATEMENT OF FACTS: During the period April 27 to June 21, 1959, the employes covered by this claim, with a work week Monday through Sunday, and classified as daily rated employes, were deprived of a five-day guaranteed work week, although they had made themselves available for work five days during each of the work weeks included in this claim.

The specific employes and dates here involved are the following:

WORK WEEK APRIL 27 TO MAY 3, 1959

Employe	Man No.	Worked	Reported
B. T. Davis	28295	April 28-29, May 1	April 27-30
E. Eklund	28686	April 27-30, May 1-2	April 28
D. Gallagher	29165	April 30, May 2-3	April 28, May 1
J. Tobin	29512	May 1-2-3	April 27-30

As the Carrier has previously stated, the intent of these records was not for the purpose of signifying any concurrence on its part that the provisions of Rule 34 apply to extra employes. The record simply shows that while the Organization is contending that all of the claimants are entitled to 5 days' work each week, in the great majority of the instances reported, the claimants could have actually worked 5 days and in not having done so, it must be assumed they were not interested in obtaining 5 days' work in the weeks specified. Yet, the Organization is contending the Carrier is obligated to guarantee each such extra employe 5 days' work each week.

It has always been recognized in railroad operations that extra employes are on a "catch as catch can" basis and that guaranteed employment has only been afforded to regularly assigned employes. While there might be mutual agreements in effect providing certain guarantees for extra employes, no such agreements have been agreed to concerning such extra employes as are the claimants in this dispute. The Grand Central Terminal Baggageroom operations have been conducted in the same manner for many years and at no time have any of these extra employes been given any 5-day work week guarantee nor have the Union representatives previously submitted any such claims.

The claim of the Organization is without merit and should be denied.

OPINION OF BOARD: In its Ex Parte Submission Carrier states that Claimants are extra employes "whose services are necessary to take care of fluctuating or temporarily increased work which cannot be handled by the regular and replacement forces. These extra employes 'shape up' for work each day and there is no certainty they will secure employment each day they so report." Nowhere does Petitioner refute this allegation. The record clearly establishes the fact that Claimants are extra employes.

In sole support of the Claim, Petitioner cites Paragraph (d) of Rule 34 which provides as follows:

> "(d) The assigned working days of employes covered by paragraphs (a) and (b) of this rule shall not be reduced below 5 per week, except that this number may be reduced by one day (the holiday) in any week in which a specified holiday occurs. This guarantee applies to the employe rather than to the position."

Carrier states that the provisions of Rule 34 apply only to regularly assigned employes, and that the Rule never has been applied to extra employes.

Paragraph (d) of Rule 34 expressly confines its application to employes covered by Paragraphs (a) and (b) thereof, which latter paragraphs refer solely to positions which, on April 30, 1954, were paid either on a monthly or daily basis. Accordingly, Paragraph (d) must be construed in conjunction with Paragraphs (a) and (b) in interpreting the Rule. Furthermore, the term "assigned working days" as used in Paragraph (d) clearly implies a regularly assigned work week. Being extra employes, claimants are assigned to no positions of their own and so have no regularly assigned work week.

Based on the record in this case, we must hold with the Carrier and decide that Rule 34 applies solely to regularly assigned employes and has no application to extra men.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.