

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5728) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly the Scope Rule, Rules 9-A-1, 9-A-2, among others, when it failed to assign Baggage and Mail Messenger P. O'Mara to work Train No. 4204 and return Train No. 4215, and Baggage and Mail Messenger F. Abel to work Train No. 4008 and return Train No. 4007 on May 30, 1964, and Baggage and Mail Messenger J. T. Baronovics to work Train No. 4008 and return Train No. 4007 on July 4, 1964, and, instead, assigned the work to employes not covered by the Scope of the Clerks' Agreement.

2. The Carrier shall pay Baggage and Mail Messenger P. O'Mara ten (10) hours and twenty-three (23) minutes, F. Abel and J. T. Baronovics nine (9) hours and twelve (12) minutes each, at the rate of time and one half, for failing to call them to work the holidays, May 30, 1964 and July 4, 1964, and for each day thereafter until the Agreement violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreement effective July 1, 1945, and as amended up to and including April 1, 1964 and the National Agreement signed at Chicago, Illinois, August 21, 1954, covering clerical, baggage and mail passengers, other office, station and storehouse employes, between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

This dispute arises from the fact that on May 30, 1964 and July 4, 1964 the Carrier failed and refused to advertise and fill the positions of Baggage and Mail Messengers on Trains 4204 and 4008, as had always been done previously by employes covered by, and in accordance with the Scope of the Clerks' Agreement and, instead, assigned the work to Trainmen not covered and outside the Scope of the Clerks' Agreement.

letter of July 27, 1964, is attached hereto and made a part hereof, marked "Carrier's Exhibit D."

The foregoing claim was denied by the Passenger Trainmaster on July 29, 1964. A copy of Passenger Trainmaster's letter of July 29, 1964, is attached hereto and marked "Carrier's Exhibit E."

Subsequently, separate Statements of Facts were prepared by the Passenger Trainmaster and the Local Chairman, which are attached hereto and made a part hereof, marked "Carrier's Exhibit F" and "Carrier's Exhibit G."

The claim was progressed by the General Chairman to the Director of Personnel, and was discussed at meeting on September 28, 1964. The claim was denied by the Director of Personnel in letter dated September 30, 1964. A copy of this letter is attached hereto, marked "Carrier's Exhibit H."

(Exhibits not reproduced.)

OPINION OF BOARD: On February 1, 1938, the Brotherhood of Railway and Steamship Clerks, etc., became the bargaining representatives of Baggage and Mail Messengers, and entered into an agreement with the Carrier covering rates of pay, rules and working conditions of these employees. By agreement, Appendix "A", dated February 15, 1951, the February 1, 1938, Agreement was abrogated, and Baggage and Mail Messengers were placed under the Clerks' basic rules and working conditions agreement which had become effective July 1, 1945.

A bulletin was posted by the Passenger Trainmaster on May 20, 1964, to cover establishment of certain Baggage and Mail Messenger positions for May 30, 1964, and on June 19, 1964, the Carrier posted a bulletin to cover the establishment of certain Baggage and Mail Messenger positions for July 4, 1964, to work Train No. 4204 leaving Jamaica and return Train No. 4215 on May 30, 1964, and one to work Train No. 4008 leaving Jamaica and return Train No. 4007 on July 4, 1964, but, instead, assigned trainmen, not covered by the Clerks' Agreement, to the work.

It is the contention of Claimants that both by the Scope Rule of the Clerks' Agreement, as amended April 1, 1964, and by custom and practice the work assigned was the exclusive work of the Baggage and Mail Messengers under the Clerks' Agreement.

To the contrary, it is Carrier's position that frequently when there was not sufficient work required to justify bulletining and assigning a Baggage and Mail Messenger to cover the work, that work had been performed by Trainmen; that by custom and practice this had not been the exclusive work of Baggage and Mail Messengers; further, that under Appendix "A" of the effective Agreement it is specifically provided that this work involved is not the exclusive work of Baggage and Mail Messengers.

Appendix "A" of the Agreement contains the following language:

"APPENDIX 'A'

It is agreed, effective as of February 1, 1951, to abrogate the Baggage and Mail Messengers Agreement which became effective

February 1, 1938 and place Baggage and Mail Messengers under the coverage of the Clerks' Agreement which became effective July 1, 1945. . . .

* * * * *

It is understood and agreed that the foregoing applies only to Baggage and Mail Messenger positions now existing and to like positions created in the future, and shall not be construed to give the employes covered by this Agreement the exclusive right to perform this class of work."

Effective April 1, 1964, the Scope Rule of the Agreement was amended, as follows:

"(b) Positions and work coming within the Scope of this Agreement belong to the employes covered thereby, and nothing in this agreement shall be construed to permit the removal of positions and work from the application of these rules, except by agreement between the parties signatory hereto."

The Petitioner contends that the change in the Scope Rule indicates an intent to adopt the position now assumed by it, that by virtue of this amendment the work involved herein is the exclusive work of the Baggage and Mail Messengers covered by the Agreement under the Scope Rule.

This might well be but for Appendix "A", of the July 1, 1945, Agreement, which was adopted February 15, 1951, Appendix "A" is a retained part of the July 1, 1945, Agreement, when that Agreement was revised and amended effective April 1, 1964. There is nothing in the April 1, 1964 Agreement indicating that Appendix "A" was abrogated or annulled.

It is a rule of contract construction that all the provisions of a contract are to be given effect if it is possible to do so. In so doing the specific will control the general provision, leaving the general provision to operate in the general field not covered by the specific provision. In the present case, Rule 1, the Scope Rule, is a general rule covering all classes of work under the effective Agreement; Appendix "A" deals specifically with the working conditions of Baggage and Mail Messengers wherein it is understood and agreed that it applies

"only to Baggage and Mail Messenger positions now existing and to like positions created in the future, and shall not be construed to give employes covered by this agreement the exclusive right to perform this class of work." (Emphasis ours.)

This language is clear and unambiguous, and custom and practice, whatever it is claimed it may have been, cannot change the intent of the provision contained in Appendix "A". Since that agreement was entered into, the work of handling mail and baggage has never been the exclusive work of the Baggage and Mail messengers. See Award 4451 (Carter). Consequently, it is within the prerogative of Management to establish when the service of Baggage and Mail Messenger positions will be required based on Carrier's judgment and the requirements of the service.

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 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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.