



Award No. 17074

Docket No. CL-16902

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6246) that:

(a) The Carrier violated the terms of the Current Agreement on Saturday, December 25, 1965, a legal holiday of Christmas, when it called extra employes W. J. Ferrell, L. K. Averett, C. J. Roskelley, Anthony Pepe and G. D. Gooch, each of whom held regularly established assignments on that extra board under the existing Extra Board Agreement, to perform extra work, on extra positions, over and above the full and normal complement of regularly assigned positions and employes existing in the Baggage Department of the Ogden Union Railway and Depot Company; and

(b) The Carrier shall now be required to compensate Mr. Lawrence Newcomb, M. A. Youngberg, D. K. Milligan, Harm Opheikens and J. D. Ricketts one day's pay each at the holiday rate of pay for Christmas Day, December 25, 1965.

EMPLOYEES' STATEMENT OF FACTS: Union Pacific mail and passenger train No. 103 westbound enroute from Omaha, Nebraska to Ogden, Utah, which is due to arrive Ogden daily at 6:40 P. M., was reported to be considerably late arriving Ogden on December 25, 1965. Train No. 103 had 1,219 sacks of mail for Portland, Oregon to be transferred at Green River, Wyoming to Train No. 105.

Union Pacific mail and passenger train No. 105 which runs westbound through Green River, Wyoming, thence north to Pocatello and to Portland, Oregon, is scheduled to connect at Green River, Wyoming and to receive the transfer of this mail from train No. 103. On the date of December 25th this mail transfer was missed, resulting in the transporting, or detouring, of the mail to Ogden, Utah on train No. 103 where it was transferred to train No. 35 for shipment to Pocatello and again transferred at Pocatello to through train service to the Pacific Northwest and to Portland, Oregon. (See Employees' Exhibit No. 1(c).)

OPINION OF BOARD: This is a claim of five employees because they were not called to perform extra work on December 25, 1965. On that day the Union Pacific Mail and Passenger Train No. 103 was reported to be very late in arriving at Ogden, Utah, where it was due at 6:40 P.M. It carried 1, 219 sacks of mail which were to be transferred at Green River, Wyoming to Train No. 105 destined for Portland, Oregon. This mail transfer to Train No. 105 was missed, but, instead, the mail was transferred at Ogden to Train No. 35 for shipment to Pocatello, Idaho, and then on by another transfer to Portland, Oregon. To handle the mail transfer from Train No. 103 to Train No. 35, five extra baggage men from the Baggage Department Extra Board were called to start working at 4:30 P.M.

Five senior regularly assigned baggage handlers who were off duty on their assigned rest day, Saturday, December 25, contend they were entitled to the work on December 25, rather than the extra employees. They claim their specific right to this work was reserved to them by the provisions of the Unassigned Day Rule 7 (i) as interpreted by Decision No. 2 of the Disputes Committee on September 23, 1949. It is their position that the unassigned work in question belongs to the regularly assigned employees without exception.

Carrier, on the other hand, argues that in accordance with Rule 7 (i) it properly assigned the work to extra available employees, as the extra employees used did not have 40 hours of work that week. Furthermore, it asserts that the fact that the assigned rest day of Claimants was also a holiday did not operate to exclude the use of extra employees or modify the right to use them under the provisions of Rule 7 (i). It also points out that there were no extra positions created for one day but rather that this work was required on a day that was not part of any assignment. Such work of a fluctuating nature and temporarily increased work, it maintains, may be performed by extra forces on straight time basis when available rather than by regular forces on an overtime basis. Inasmuch as the holiday work fell on the workday of the relief employees and it was not work that would normally be performed by any of the regular assignments on any day of the week, Carrier contends that Claimants had no right to this work.

Both parties agree that Rule 7 (i) is controlling, but their conclusions concerning the application of this rule are in conflict. From the record we find that the work which was due to the late arrival of Train No. 103 was extra work which was required in addition to the normal work of the regular employees assigned in the Baggage Department. Although Carrier justifies the assigning of five extra baggagemen from the Baggage Department Extra Board who did not have 40 hours of work during that week as necessary to meet the emergency condition of handling the extra amount of mail, we find that Rule 7 (i) interpreted with Decision No. 2 of the Disputes Committee designates such extra work on a holiday as work to be performed by the regular employees. Under these circumstances we hold that the Agreement was violated, and the claim is allowed.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1969.

CARRIER MEMBERS' DISSENT TO AWARD 17074, DOCKET CL-16902 (Referee Engelstein)

This Award is invalid in that it purports to sustain the claim on the basis of language in Decision No. 2 which was deliberately omitted from the parties' agreement.

While the Employees argue that "Decision No. 2 of the Forty-Hour-Week Committee defined this work on holidays as work to be performed by the regular employees only, from which the use of extra employees was completely excluded", Carrier tells us that the pertinent language in Decision No. 2 was "deliberately omitted from Rule 7(i) when the parties wrote that rule." The language relied upon by the Employees does not appear in the parties' agreement, and the Employees have placed nothing in the record to refute Carrier's assertion that the omission was deliberate.

It is elementary that this Board has no jurisdiction to invoke against either party a contract provision that does not appear in their current agreement. The Board has no power to make or amend rules. Section 3 First (i) of the Railway Labor Act; Award 42.

For these reasons we must dissent.

G. L. Naylor
R. E. Black
W. B. Jones
P. C. Carter
G. C. White