



Award No. 18446
Docket No. CL-18480

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6668) that:

(a) The Carrier violated the Rules Agreement effective February 1, 1968, and particularly the Extra List Agreement No. 11, effective March 1, 1950, Mail and Baggage Department, Penn Central Station, Pittsburgh, Pa. on second tour, February 26, 1968, by assigning junior employe, S. Yagodzinski to work eight hours as a Station Baggage-man instead of senior available Extra List Employee, C. J. Dzimidowicz; and similarly on third tour, February 27, 1968, by assigning junior employe L. B. Michael to work eight hours as a Station Baggage-man instead of senior available Extra List employe R. E. Washington.

(b) That C. J. Dzimidowicz and R. E. Washington each be compensated one days pay at the Station Baggage-man rate of pay for lost wages due to these violations. (Docket 2311)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employes in which the Claimants in this case held positions and the Penn Central Company—hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement, effective February 1, 1968, covering Clerical, Other Office, Station and Storehouse Employees 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 together with its several appendices and attachments will be considered a part of this Statement of Facts. Various Rules and quotations thereof may be referred to herein from time to time without quoting in full.

There is also in effect Extra List Agreement No. 11, effective March 1, 1950, which Agreement was effective prior to the date of the merger of the

OPINION OF BOARD: The facts in this case may be concisely set forth:

Claimants are C. J. Dzimidowicz, Group 2 seniority date September 23, 1941, Extra Station Baggage man, Symbol SF-832, tour of duty 3:00 P. M. to 11:00 P. M., and R. E. Washington, Group 2 seniority date July 3, 1941, Extra Station Baggage man, Symbol XF-295, tour of Duty 11:00 P. M. to 7:00 A. M., Baggage Department, Pennsylvania Station, Pittsburgh, Pa.

Employee S. Yagodzinski, Group 2 seniority date April 4, 1943 and L. B. Michael, Group 2 seniority date September 23, 1943, had status as "Utility employees" and on dates in question, were performing service in Baggage Room, Pennsylvania Station, Pittsburgh, Pa.

On February 26, 1968, 3:00 P. M. to 11:00 P. M., employee S. Yagodzinski performed service in the Baggage Room, Pennsylvania Station, Pittsburgh, Penna.

On February 27, 1968, 11:00 P. M. to 7:00 A. M., employee L. B. Michael performed service in the Baggage Room, Pennsylvania Station, Pittsburgh, Pa.

The service performed by employees Yagodzinski and Michael was to make a count of storage mail cars ("car mails") being handled in the U. S. Post Office.

Employees contend Carrier violated the Rules Agreement and Extra List Agreement No. 11 by utilizing junior employees to perform the involved work on the dates in question; and, therefore, Claimants should be paid a day's pay each as claimed.

Extra List Agreement No. 11 was entered into on March 1, 1950, under the provisions of Rule 5-C-1, which reads:

"RULE 5-C. EXTRA BOARDS

Where extra employees are used extra boards will be established by agreement between the appropriate officer of the Company and the Division Chairman. The number of extra employees to be used and the manner in which they will work will be determined by written agreement between the appropriate officer of the Company and the Division Chairman."

Extra List Agreement No. 11 was established for the purpose as set forth in its Scope and Item 1 and Item 2.

"SCOPE

In order to establish a basis for handling extra work accruing to Group 2 employees at the Baggage Room, Pennsylvania Station, Pittsburgh, Pennsylvania, under the jurisdiction of the Assistant Agent-Baggage, the present Agreement, dated January 16, 1943, is superseded and the following is agreed upon in compliance with Rule 5-C-1 of Agreement entered into by and between the Pennsylvania Railroad Company and Clerical, Other Office, Station, and Storehouse Employees of the Pennsylvania Railroad Company, represented by Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Item 1. Three extra lists of employees will be maintained to protect extra work, and vacancies on regular positions of Station Baggage, Baggage Checkman (when no employees having seniority rights are available) and Messenger, Baggage Room, Pennsylvania Station, Pittsburgh, Pennsylvania, under the jurisdiction of the Assistant Agent-Baggage. This includes Mail Room, Checking Counter, Mail Wharf, and U. S. Post Office.

Item 2. First trick extra list will protect service from 7:00 A. M. to 3:00 P. M., the second trick extra list will protect service from 3:00 P. M. to 11:00 P. M., and the third trick extra list will protect service from 11:00 P. M. to 7:00 A. M. An extra employee of the first trick extra list may be continued in service to 3:30 P. M., of the second trick to 11:30 P. M., and of the third trick to 7:30 A. M., to complete an eight-hour tour of duty. Such extra employees may be continued in service on the succeeding trick to complete the guarantee under Rule 4-A-6 (d)."

Item 6(a) provides that:

"SENIORITY

Item 6(a) Senior qualified available employee at the beginning of the extra service, except as provided in Item 9, will be considered first out for the service. Upon completion of the service, he will return to the extra list in proper standing."

The Employees contend that the two Claimants were available for work on the dates in question, but that junior employees who each had status as a "utility employee" were utilized. It is the Employees' contention that the junior employee did not have a position or standing under Extra List Agreement No. 11.

The Carrier argues that Section V of the October 18, 1966 Implementing Agreement clearly and explicitly gives the Carrier the right to use "utility employees" regardless of any agreement to the contrary.

"V. Regardless of any agreement to the contrary, a utility employee may be used to perform service for which qualified either in his own or any other seniority district within his home zone, provided such use does not result in the abolishment of any other regularly assigned position, except that such utility employee may be used in his home zone on any position for which he is qualified on his own seniority district to replace any employee hired subsequent to April 1, 1965."

The Carrier also cites Rule 9-A-2(b) of the Clerical Agreement:

"RULE 9-A-2(b)

In cases where the application of any rule of this Agreement is in conflict with either Attachment I or II, the appropriate provision of Attachment I or II, as the case may be, shall be applicable and supersede such rule."

A careful reading of these provisions of the Rules Agreement and the Extra List Agreement indicates an acceptance and respect for a system granting preference in job security, promotions or other rewards to employees in accordance with their length of service. This Board has studied the whole agreement in an effort to reach its true intent and meaning.

We find no conflict between the provisions of the Rules Agreement, the applicable extra list agreement or any of the protective agreements. We find no provision that reduces seniority rights and standings held by each individual employee at the time of the merger. It would be a contractual contradiction to undo seniority by stressing part of a clause and not consider the text and context of Article V of the October 18, 1966 Agreement.

In describing the status of the utility employee the Implementing Agreement of October 18, 1966 affirms seniority rights and standings at the time of the merger.

"IV. (a) 1.

'Present employees' will not be required to obtain a position available to them in order to retain their status as 'present employees,' except as provided in VI hereof and except that utility employees may be required by the Company, in reverse seniority order, to take any position for which they are qualified in their seniority district held by a junior non-present employee, which does not require a change in residence, and if there is no such position, then take any position held by a junior non-present employee in the seniority district.

2. A utility employee who refuses to take a position for which he is qualified held by a junior non-present employee in his seniority district which does not require a change in his residence, as provided above, will forfeit seniority and lose all protection under the Merger Protective Agreement.

3. A utility employee who is requested to take a position for which he is qualified in his seniority district held by a junior non-present employee, and which requires a change in his place of residence in accordance with II(b) hereof, shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer with the benefits contained in XII and XIII hereof, or to resign and accept a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under the Merger Protective Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided."

While this Board urges the principle of subsidiarity and the right and duty of the Parties to handle interpretation or application of the Agreement in the designated Disputes Committee, a careful study of the Railway Labor Act indicates that this Board also has jurisdiction over the dispute involved herein.

Upon consideration of the collective bargaining agreement, exhibits introduced, oral review and arguments presented in the record, it is determined that the Carrier did violate the Rules Agreement. We must sustain the Claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of March 1971.

CARRIER MEMBERS' DISSENT TO AWARD 18446, DOCKET CL-18480 (Referee Quinn)

The Majority has failed to give proper weight to the purpose and chronology of the Agreements before it in this case.

There can be no doubt that the October 18, 1966 Implementing Agreement permitted the use of utility employees which occurred here "regardless of any Agreement to the contrary." The Schedule Agreement, Rule 9-A-2(b) was specifically amended to provide that in the case of conflicts between the Schedule Agreement and the Merger or Implementing Agreements, the latter would govern.

It should have been obvious that the so-called "respect for a system granting preference . . . to employees in accordance with their length of service" as found by the Board generally is not a true expression of the intention of the Schedule Agreement and Implementing Agreement taken together.

The use of utility employees permitted by the Implementing Agreement constitutes an exception to the strict application of seniority. That exception was agreed to in view of the fact that utility employees are protected in their employment and compensation. In consideration of that protection, the Carrier has the right to use them regardless of seniority so long as that use did not result in the abolishment of a regularly assigned position.

The failure of the Board to clearly analyze these Agreements resulted in a serious misapplication in this case to which we dissent.

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