

Award No. 19069
Docket No. CL-15329

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5646) that:

CASE No. 1

(a) Carrier violated the Clerks' Agreement when it assigned work of a station porter position at Cleveland, Mississippi to employees of other crafts on two holidays, Christmas Day, December 25, 1961, and New Year's Day, January 1, 1962.

(b) Horace Hunter, incumbent of the porter position now be compensated four (4) hours' pay at the penalty rate of \$3.0938 per hour for December 25, 1961 and for January 1, 1962.

CASE No. 2

(a) Carrier violated the Clerks' Agreement when it assigned work of a station porter position at Cleveland, Mississippi to employees of other crafts on the holiday, Washington's Birthday, February 22, 1962.

(b) Horace Hunter, incumbent of the porter position, now be compensated four (4) hours' pay at the penalty rate of \$3.0938 per hour for February 22, 1962.

CASE No. 3

(a) Carrier violated and continues to violate the Clerks' Agreement when it assigns work of a station porter position at Cleveland, Mississippi to employees of other crafts on the Saturday rest days of the position.

(b) Horace Hunter, incumbent of the porter position, and his successors in interest, if there be any, now be compensated four (4) hours' pay at the penalty rate of \$3.0938 per hour, as subsequently increased, for Saturday, March 31, 1962 and each succeeding Saturday until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS — CASE NO. 1: The station porter position, held by Claimant Horace Hunter, has a work week of

The position was formerly a seven-day position with relief provided by a regularly assigned relief porter on Saturday and Sunday but was subsequently changed to a five-day position with no relief on the Saturday and Sunday rest days.

On Saturday, March 31, 1962, and each Saturday thereafter, the loading and unloading of mail and baggage to and from passenger trains Nos. 23 and 24 was assigned to and performed by the agent and the train porter. Claimant is not permitted to work on those dates.

Claim in Case No. 3 was filed with the trainmaster on April 14, 1962. Employees' Exhibits Nos. 7-A, 7-B and 7-C. Claim was appealed to the superintendent on April 28, 1962. Employees' Exhibits Nos. 8-A, 8-B and 8-C. Claim was appealed to the manager of personnel on May 14, 1962. Employees' Exhibits Nos. 9-A to 9-S, inclusive. The dispute was discussed in conference with management on August 3, 1962 but not composed.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Since April, 1958, the porter-trucker position at Cleveland, Mississippi has been a five day per week assignment. During his work week, the incumbent trucks freight in the warehouse, assists in loading and unloading over-the-road trucks, runs errands, cleans the station, offices, and waiting rooms and assists in loading and unloading mail and baggage on Trains 23 and 24. The mail and baggage work is the least time consuming. Trains 23 and 24 each spend about five minutes at the station. Even on busy days, the work takes no more than twenty minutes. If the porter-trucker is busy with one of his other duties, the agent-operator or a clerk handles the mail and baggage.

On holidays and weekends, there is no work for the porter-trucker. The only work usually performed by the claimant during weekdays is the mail and baggage work. The volume of mail and baggage is usually much lighter than it is during the week. On holidays, there is no mail and there are only a few parcels to handle. On weekends, both the mail and the baggage is light. Since 1958, business has been such that the agent has been able to handle the mail and baggage on weekends and holidays without the assistance of a porter-trucker. The union waited until December, 1961 to argue that the work belonged exclusively to the porter-trucker.

In Case No. 3, the local chairman failed to notify the division superintendent of the rejection of his decision. The union claimed that the letter of rejection had been written and mailed, but the superintendent never received it. The pertinent correspondence exchanged on Case Nos. 1, 2, and 3 appears as management's exhibits A, B, and C, respectively.

(Exhibits not reproduced.)

OPINION OF BOARD: In the handling on the property and in its submission to the Board the Carrier contended that the portion of the claim identified as Case No. 3 is barred under the time limit rule (Article V of the August 21, 1954 National Agreement) because the Division Superintendent was not notified of the rejection of his decision.

The Petitioner contends that the Local Chairman wrote and mailed a letter of rejection. The Carrier contends that the Superintendent never re-

ceived it. The Petitioner has not presented any probative evidence to prove receipt of the letter of rejection by the Superintendent, which it had the burden of doing. See Awards 11505, 14354, 15395, 10173 among others. We hold, therefore, that this portion of the claim is barred.

As to those portions of the claim identified as Case No. 1 and Case No. 2, the claims are that station porter?trucker should have been called out on the holidays listed to perform work that he normally performed during his regular work week, that is the handling of mail and baggage for trains Nos. 23 and 24, which work, on the dates involved, was performed by the station agent and train porter. The Carrier's position is that the work of handling mail and baggage is not the exclusive work of claimant but that such work has, through the years, been performed by agents and other non-clerical employees.

It is well established by awards of this Board that if work of a position is required on holidays, the regular employe is entitled to be used. There is ample evidence to conclude that the claimant was the "regular employe" in the claims identified as Case No. 1 and Case No. 2. These portions of the claim will be sustained. See Awards 18260, 17952, and 14319.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That portion of claim identified as Case No. 1 and Case No. 2 sustained; that portion identified as Case No. 3 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.