

C O P Y

SPECIAL BOARD OF ADJUSTMENT NO. 192



PARTIES: BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 1

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the Clerks' Agreement on the Baltimore and Ohio Railroad property at Pittsburgh, Pa.,

(a) When it failed to fill the regular assigned positions established under the Rules at the Pittsburgh Freight Station platform on December 8, 1953, and

(b) That John Mobrey, Trucker and Extra Tallyman, be paid the difference between the rate of Tallyman (\$14.31 per day) and Trucker (\$1.672 per hour) for eight (8) pro rata hours on Tuesday, December 8, 1953, and Jay L. Pridgeon and James Hardwick, Truckers, for eight (8) pro rata hours at \$1.672 per hour on December 8, 1953.

FINDINGS:

Pursuant to the provisions of Rule 10(b), as of December 8, 1953, regularly assigned positions of ten tallymen and twenty-two truckers were in existence on the freight platform at Pittsburgh. On that date one regularly assigned tallyman and two regularly assigned truckers failed to report for duty. Claim is made on behalf of a trucker holding status as a tallyman and on behalf of two extra truckers because those positions were not filled on that day.

Under Rule 10 of the current agreement the parties agreed upon a formula for the establishment of regularly assigned Freight Station Platform positions. It is the contention of the employees that in Rule 10 there is an implicit guarantee concerning the positions so established so that the Carrier may not blank those positions when the incumbents thereof fail to report for duty. The Carrier contends that there is nothing in Rule 10 which establishes any kind of guarantee and that there is no established practice on the property which would require the Carrier to fill vacancies arising under the circumstances here presented.

It appears from the record that Rule 10 of the current agreement grew out of a mediation proceeding in 1933. The employees assert that it has always been the practice until recently to fill vacancies occurring under the circumstances here present and, as noted above, the Carrier asserts the opposite. Yet neither side has shown any concrete evidence to support the assertions made. Hence we are required to determine the intent of the rule without any aid from established practice.

The rule itself is silent with respect to any guarantees. In requiring the establishment of a given number of regularly assigned positions it is clear that the intent of the rule is to assure a certain number of employees that work will be afforded to them on the days of their assignments regardless of the needs of the service subject to the Carrier's right to abolish by posting notice. This, as asserted by the Carrier, operates as a restriction upon its previous freedom to release platform forces after four hours on duty. It is clear, therefore, that Rule 10 operated to some extent as a guarantee of work to the individual holding the regularly assigned positions required to be established by its terms. Whether or not it constituted a commitment by the Carrier to fill vacancies regardless of the needs of the service when occupants of those positions for reasons of their own failed to report for duty is another matter.

There are numerous awards of the National Railroad Adjustment Board on the general proposition of the right of the Carrier to blank regularly assigned positions when the incumbents thereof fail to report for duty. Those awards both before and after the forty-hour week agreement quite generally are in agreement (with the exception of seven day positions necessary to the continuous operation of the Carrier prior to the 40 hour week agreement) that there is nothing implicit in the establishment of a regularly assigned position which prohibits the Carrier from blanking such positions when the incumbent fails to report for duty. We are in agreement with the general rationale of those Awards. Those Awards are not necessarily determinative of the interpretation of Rule 10 which is peculiar to this property. However, if the employees are correct in their contention to the effect that the Carrier has guaranteed that the positions would be worked every day of the assignment regardless of the absence of the incumbent, such guarantee would have to arise by implication from the establishment of the regular assignments since there is no express guarantee in the rule itself. The thinking reflected by those Awards rebels against the contention advanced by the employees.

We find nothing in the language of Rule 10 which requires a conclusion that the Carrier must fill these positions on days when the regularly assigned employee fails to report for duty.

In view of this and the considerations expressed in the prior paragraphs of these Findings we have no alternative but to find that there is no basis for a sustaining Award.

AWARD

Claim (a) and (b) denied.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

E. J. Hoffman
Employee Member

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this 16th day of February, 1959.