Award No. 1749
Docket No. 1670
2-PRR-URRWA-CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PENNSYLVANIA RAILROAD COMPANY (Eastern Region)

DISPUTE: CLAIM OF EMPLOYES: 1. That within the meaning of the Controlling Agreement, the carrier stands in violation thereof in that Carman J. W. Shaw, Jr., and Carman Helpers H. R. Belote and W. C. Redden have been unjustly dealt with on the property of the carrier when they were assigned to the duties of Assigned Laborers, whose duties are governed by another Collective Bargaining Agreement.

2. That accordingly, the carrier be ordered to additionally compensate J. W. Shaw, Jr., H. R. Belote and W. C. Redden eight (8) hours for November 30 and December 8, 1949, at the applicable rate of their own positions.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties hereto dated July 1, 1949 and subsequent amendments, copy of which is on file with the Board and is, by reference here, made a part of this statement of facts.

At Cape Charles, Delmarva Division, Eastern Region, the Pennsylvania Railroad Company, hereinafter referred to as the carrier, employes a force of carmen and carmen helpers coming within the confines of an agreement negotiated by and between the Pennsylvania Railroad Company and the United Railroad Workers of America, CIO.

The carrier also employs a group of assigned laborers known as store house employes, or miscellaneous forces, coming within the confines of another collective bargaining agreement.

On November 30 and December 2, 1949, the days involved in the instant dispute, H. R. Belote, W. C. Redden and J. W. Shaw, Jr., employes of the carmen craft, hereinafter referred to as the claimants, were assigned to freight and passenger car wrecking, inspecting freight cars, and operating wreck derrick and ash pit crane.

However, on the dates heretofore mentioned, the claimants were assigned to unload part of a carload of soda ash by shoveling the material from the car to an automobile truck, then unloading the truck and placing the soda ash in the storage building, at the water softener. In addition, they unloaded various other company material from cars, which was placed in the storehouse.

said agreement, which constitutes the applicable agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim in this case would require the Board to disregard the agreement between the parties and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the use of the claimants temporarily on other than their regular assignments on November 30 and December 2, 1949, was entirely proper and permissible under Regulation 4-J-1 of the applicable agreement and that the claimants are not entitled to the compensation which they claim; further that the claim in this case was not handled by the employes in accordance with the spirit and intent of the Railway Labor Act, as amended, by reason of the unreasonable delay in progressing such claim to your Honorable Board.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved.

The parties to said dispute were given due notice of hearing thereon.

The Controlling Agreement, under which the claimants work, includes the rates of pay and working conditions of Boilermakers, Electricians, Carmen (including Coach Cleaners), Molders (including Melters and Coremakers), their helpers and apprentices, Power House Employes, and Rail Shop Laborers.

There is no dispute as to the facts which prompted this claim. It is the contention of the employes, that the work involved is that of Laborers in the Stores Department. However, there is no evidence submitted in support of that statement. The carrier relies on Regulation 4-J-1, the appropriate paragraph reading:

> "An employe required to fill temporarily the place of another employe receiving a lower rate, shall not have his own rate changed."

There was no violation in the instant case.

AWARD

Claim disposed of in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1954.