

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

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

FORT WORTH AND DENVER CITY RAILWAY COMPANY

DISPUTE.—

“Violation of Agreement Rules by the Company in abolishing all regularly assigned positions of Truckers at Fort Worth, Texas, and thereafter assigning all such employees as ‘Extra men’ with no assigned hours and refusing to permit the employees to work or be paid in accordance with Agreement rules; and claim of such employees for payment of minimum of eight (8) hours per day for each day worked since July 8, 1932.”

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

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

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

Prior to July 8, 1932, all truckers (laborers), considered as regular employees at Fort Worth freight station, were required to and did report for work at a regular starting time and place. Such employees were also permitted to perform and be paid for eight hours' service daily, except Sundays and holidays. On July 5, 1932, the carrier posted the following bulletin and notice:

“Beginning Friday, July 8, 1932, all laborers will be considered as extra men; business being too light to maintain a regular force.”

On and after July 8, 1932, the carrier did not maintain a regular force of truckers with regular assigned hours of service, but considered and treated all such employees as extra men who reported for duty, and they were given work in accordance with their seniority rights, or released at the option of the supervising officer. The employees who were released from duty before the expiration of eight hours' service, received pay only for actual hours worked.

The freight station at Fort Worth is open for service regularly each day, except Sundays and holidays, from 8:00 A. M. to 8:00 P. M.

There is in evidence an agreement between the parties bearing effective date of December 1, 1924, and the following rules thereof have been cited in support of claim:

“RULE 3—SENIORITY DATUM

“(a) Seniority begins at the time the employe's pay starts on the seniority district and in the seniority class to which assigned, and will apply in filling new positions or vacancies, and in the reduction of forces. This is not to conflict with Rule 4.

“(b) Where two or more employes enter upon their duties at the same hour on the same day, employing officer shall at that time designate respective seniority rank of such employes.

"RULE 5—SENIORITY DISTRICTS

"Seniority rights will apply and rosters be maintained separately for:

"1. Office of Vice-President and General Manager.

"2. Offices of—

Secretary and Treasurer.

General Auditor.

Auditor of Expenditures.

Auditor of Revenues.

Car Accountant.

Freight Claim Agent.

"3. Offices of—

Legal Department.

General Claim Agent.

Tax and Right-of-Way Agent.

Engineering and Valuation Departments.

"4. Traffic Department (including General Agencies at Fort Worth, Wichita Falls, and Amarillo and City Ticket Agency at Fort Worth, but excluding off-line General Agencies—separate seniority rosters to be maintained for off-line General Agencies).

"5. Office of Superintendent Transportation.

"6. Office of Superintendent Motive Power.

"7. Offices of General Superintendent, Trainmaster, and Chief Dispatcher of Wichita Falls Division.

"8. Offices of Superintendent, Assistant Superintendent, and Chief Dispatcher of Amarillo Division, and office of Supervisor Bridges and Buildings at Childress, Texas.

"9. Office of Master Mechanic, and all other offices or sub-departments under the jurisdiction of Master Mechanic.

"10. Office of General Storekeeper and all offices or sub-departments under the jurisdiction of General Storekeeper.

"11. Union Passenger Station at Wichita Falls, Texas.

"12. All offices and stations not otherwise listed. Fort Worth to Wichita Falls, not including Wichita Falls.

"13. All offices and stations, not otherwise listed, Wichita Falls to Childress, not including Childress.

"14. All offices and stations, not otherwise listed, Childress to Texline, Texas, inclusive.

"15. Offices of Superintendent, Trainmaster and Chief Dispatcher of Wichita Valley Railway.

"16. All offices and stations on Wichita Valley Railway not otherwise listed.

"RULE 6—SENIORITY CLASSES

"Seniority is restricted to the three groups of employees mentioned in Rule 1 of this agreement, as follows:

"Groups 1 and 2 shall constitute one seniority class (except elevator operators, office and station watchmen, and janitors).

"Group 3 (including elevator operators, office and station watchmen, and janitors) will be considered a separate seniority class.

"An employee in Group 3 with clerical ability, and with six months' service, when recommended by his Superintendent or head of department, without right of appeal by employee, shall have opportunity to bid on vacancies in positions falling in Groups 1 and 2, using his seniority date as a Group 3 employee but taking seniority as an employee in Groups 1 and 2 from the date of acceptance of a position in Group 1 or Group 2.

"An employee in Group 3, with six months' service, if used temporarily on relief work in a position in Group 1 or Group 2 a total of sixty full days (not necessarily consecutive) will be given date on the proper roster of Groups 1 and 2 as of date of completion of sixty days (which seniority date as an employee in Group 1 or Group 2 may only be retained on condition that he bids for and accepts the first vacancy in Group 1 or Group 2 for which qualified under Rules 4 and 8) and will continue to accumulate seniority on the list from which promoted.

"When force is reduced employe will exercise seniority under the rules of this agreement first on the roster of employes in Groups 1 and 2, subject to the qualifications of Rule 4, but if forced off of the roster of employes in Groups 1 and 2 he may within five days resume date on seniority list from which promoted to roster of employes in Groups 1 and 2 and exercise seniority thereon, retaining his seniority in Groups 1 and 2.

"Such seniority as an employe in Groups 1 and 2 may be retained only on the condition that he returns to a position in Group 1 or Group 2 whenever force is increased or he bids for and accepts the first vacancy in Group 1 or 2 for which qualified under Rules 4 and 8.

"RULE 33

"Except as otherwise provided in these rules, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a days' work.

"RULE 35—REPORTING AND NOT USED

"Employes required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held, with a minimum of two (2) hours.

"If worked any portion of the day, under such conditions, up to a total of four (4) hours, a minimum of four (4) hours shall be allowed. If worked in excess of four (4) hours, a minimum of eight (8) hours shall apply.

"All time under this rule shall be at pro rata.

"This rule does not apply to employes who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employes who lay off of their own accord before completion of the day's work.

"RULE 40—CHANGING STARTING TIME

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least twenty-four hours' notice to the employes affected.

"RULE 60—RATES

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of this agreement."

The petitioner contends that the handling of freight at Fort Worth freight station re-occurs regularly each working day, and that the carrier is within its rights, under the rules, to increase and decrease its force of truckers in conformity with seniority standing to meet the volume of work available from day to day; that the carrier is not privileged to deny employes, whose seniority entitles them to employment, the right to work and be paid less than eight hours per working day on any days when service is performed, except when unforeseen conditions arise beyond the control of the carrier, and that the provisions of Rule 33 apply to the employes in question.

Petitioner also contends that the carrier, by its bulletin of July 5, 1932, discontinued or abolished regular established positions of truckers and created part-time or short-hour positions for the purpose of reducing the rate of pay and evading the application of the rules of the agreement, thereby violating the provisions of Rule 60.

Further, that this being regular work re-occurring every day, except Sundays and holidays, the carrier also violated Rule 40 in not assigning a regular or fixed starting time for the positions in question; that these employes work daily, are engaged in handling the regular business of the carrier, and are not engaged in handling fluctuating or temporarily increased work which cannot be handled by regular forces.

The carrier contends that the freight station at Fort Worth is a facility where inbound and outbound LCL business is handled in the same warehouse and over the same platforms; that this LCL freight is received in railroad cars

and moved by highway motor truck to consignees' places of business, or by motor truck to stations of connecting railways for forwarding beyond, all of which is classed as inbound traffic; that this same class of freight is delivered to the carrier on highway motor truck by shippers for forwarding by railroad, or delivered to the carrier by motor truck and in railway cars by connecting lines for forwarding, this being classed as outbound traffic; that the carrier also, handles tonnage transfer from car to car that is being received and forwarded by rail, this being included in the general classification of inbound and outbound business.

The carrier also contends that at Fort Worth station there is quite a disparity in the relation between inbound and outbound tonnage and almost a complete lack of balance in this respect; that in the year 1935, LCL business was divided, 16% inbound, 84% outbound; that until within the last two or three years inbound and outbound tonnage was balanced to an extent that enabled the carrier to work all truckers full eight hours each working day; that formerly it was the practice of all railways in Fort Worth to move LCL freight to the stations of connecting lines in trap railroad cars, by which method all of this freight loaded at the stations of connecting lines on one day was, as a rule, placed at the station of the respondent carrier at the usual commencing time on the following morning; that in addition to this tonnage, there was a considerable volume of cotton reaching Fort Worth from points on the line, in mixed cars, i. e., each car contained cotton for one or more connecting lines, and at times also for local delivery.

The carrier further contends that under former conditions, it was not necessary to work truckers less than eight hours per day; that because of the fact that motor carriers have no fixed closing time, the starting time at the warehouse was first changed from 8:00 A. M. to 8:30 A. M., then to 9:00 A. M., and that it is now 11:30 A. M.; that on July 8, 1932, by appropriate notice, all truckers were placed on extra basis; that this was done because the carrier found that notwithstanding the adjustments made in working hours, they were still encountering periods of idleness for the truckers; that although truckers performing this work are considered extra men, seniority is observed; that the volume of freight is most uncertain and erratic and therefore the nature of the work, which is to handle that freight, is necessarily uncertain, erratic and fluctuating, and that the last paragraph of Rule 35 applies to these employees.

The Division finds that the record is indefinite as to the number of employees affected by this violation of rules for the early period of the claim. In this regard the evidence is obscure or conflicting.

Exhibit B of the carrier, however, makes a clear record as to the facts and the number of employees involved for brief periods beginning February 11, 1935. This exhibit shows that, exclusive of Sundays and Labor Day, for the periods February 11 to February 23, inclusive, 7 to 10 employees, and from August 16 to September 7, inclusive, 1935, 7 to 11 employees were worked, with the exception of one day on which 12 were used.

Based on the foregoing evidence, which is corroborated by other evidence and statements in the record, the Division finds that such portion of the force as was used with regularity could and should have been established with a fixed starting time under Rule 40, and compensated under Rule 33. The remaining employees who were engaged to take care of fluctuating or temporarily increased work which could not be handled by the regular force, as provided for in Rule 35, were properly compensated.

AWARD

Claim sustained on basis of above findings, effective February 11, 1935.

The carrier and petitioner are directed to make a joint check of the payrolls for the period subsequent to February 11, 1935, and senior employees constituting the regular force shown to have been used, shall be compensated under Rule 33; except in instances, if any, of an unusual nature, wherein it is shown that employees were prevented from performing service by conditions beyond the control of the carrier as contemplated in Rule 35.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1936.