Award No. 2607
Docket No. CL-2614

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement when it failed and refuses to restore established working condition and practice of reimbursing employes for expenses incurred in moving their household goods by truck over the highway, from one city to another, by reason of consolidations and transfers effected by the Carrier, causing a change in residence, and

1. That the Carrier shall be required to restore said established working condition and practice.

2. That the Carrier shall be required to reimburse Mr. T. F. Grady for his moving expenses from Manchester, N. Y. to Philadelphia, Pa., amount $196.50, account of the Carrier transferring Revision Clerks' position from Manchester Yard Office to Auditor of Traffic Offices at Philadelphia.

EMPLOYES' STATEMENT OF FACTS: Effective January 18, 1943, the work performed by the six (6) Revision Clerks located at Manchester Yard Office was transferred to the Auditor of Traffic Offices at Philadelphia, Pa. Mr. Grady was the only clerk electing to follow his work to Philadelphia.

Mr. Grady advised the Committee that he desired to move his household goods to Philadelphia and in handling the matter with Mr. Laughton, Auditor of Traffic, the Committee was requested to have Mr. Grady furnish an estimate of the cost of his moving expenses. The estimated figures submitted by Mr. Grady were as follows:

"Miller Storage Co. —Movement by truck $212.24
J. B. Murray, Geneva—Movement by truck 193.62

Via rail and truck —Approximately $200.00 for crating plus $25.00 trucking to R. R. Station. Uncrating and carting to house in Philadelphia $56.00 for total of $281.00."

NOTE: The straight trucking movement was by far the cheapest and therefore, Grady having rented a house in Philadelphia and in order to avoid payment of double rent, moved to Philadelphia by truck on April 1st at cost of $196.50.

The trucking of employes household goods, instead of moving them via rail was used in the cases of employes in the Superintendent of Motive Power Office moved from Bethlehem, Pa., to Sayre, Pa.; Accounting Department forces moved from Philadelphia and Sayre to Bethlehem; and Superintendent's forces moved from Easton, Pa. to Wilkes-Barre, Pa.

POSITION OF CARRIER: Rule 54 of the Clerks' Agreement reads as follows:

> "Employes exercising seniority rights to new positions or vacancies which necessitate a change of residence will receive free transportation for themselves, dependent members of their families, and household goods, on the lines of the Lehigh Valley when it does not conflict with State or Federal Laws, but free transportation of household effects under this circumstance need not be allowed more than once in a twelve-month period."

We advised Mr. Grady that we would arrange for the transportation of his household goods in accordance with this rule, but he decided that he would not use the railroad, but would have his goods transported by truck.

We must take exeception to the statement of claim by employes that we failed and refuse to restore established working conditions incurred in moving their household goods by truck over the highway from one city to another, as no such practice has been established. It is true that under some circumstances we have paid the expenses of employes for the transportation of their household goods by truck, but, certainly, a concession made for specific cases does not abrogate the rule in the agreement, which is very clear and unambiguous, and obligate us to do it in all cases contrary to the agreement.

Inasmuch as a concession beyond the rule in specific cases does not establish a practice, and the rules of the Clerks' Agreement were not violated, this claim should be denied.

OPINION OF BOARD: On January 18, 1943, the carrier's Waybill Revision Bureau at Manchester, N. Y., manned by six clerical employes, one of whom was the claimant, was discontinued. Concurrently, the claimant accepted a like position in the office of the Auditor of Traffic at Philadelphia. Before removing to Philadelphia the claimant asked the carrier to bear the expense of transporting his household goods to that point. The Auditor of Traffic requested an estimate of the cost involved. This disclosed $193.62 for moving by truck, as against $281.00 by rail, the latter figure including $200.00 for crating (unnecessary in truck movements) and cartage. The carrier declined to bear the expense of trucking, actually $196.50, which the claimant paid and for which he now seeks reimbursement.

The pertinent rules are 53 and 54 of the Agreement effective March 1, 1939. These read:

> "RULE 53. **Transfer by Management.**
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> "Employes transferred by direction of the Management to positions which necessitates a change of residence will receive free transportation for themselves, dependent members of their families, and household goods, on the line of the Lehigh Valley Railroad when it does not conflict with State or Federal Laws."
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> "RULE 54. **Transfer by Seniority.**
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> "Employes exercising seniority rights to new positions or vacancies which necessitate a change of residence will receive free transportation for themselves, dependent members of their families, and household goods, on the lines of the Lehigh Valley when it does not conflict with State or Federal Laws, but free transportation of household effects under this circumstance need not be allowed more than once in a twelve-month period."

The carrier claims that the extent of its obligation was to provide the claimant with free transportation for his household goods over its own lines, which do not serve Philadelphia, and that there is no contractual basis for the demand that it reimburse the claimant for his trucking expenses. The claim-

ant says that his removal to Philadelphia was occasioned by the transfer of his position and that by long-established practice Rule 53 has come to mean that the carrier is obligated to bear the expense of removal under such circumstances. He asks that we so interpret said rule and sustain his claim for reimbursement.

There is a conflict in the evidence as to whether the claimant's position was transferred to Philadelphia by the carrier or whether it was obtained through the exercise of seniority. The circumstances most favorable to the claimant's theory are that the position at Philadelphia carried the same desk number, duties and salary as that at Manchester, but we do not deem it necessary to determine in what manner the claimant found himself in the Philadelphia position.

The language of Rules 53 and 54 lends no support to the proposition that the carrier is obligated to do more than to make its railroad facilities available to an employe who is designated to fill another position requiring removal, whether accomplished by transfer or through exercise of seniority. If the carrier is duty bound to bear the expense of transporting the employe's goods by any means other than over its own lines, that obligation must be found in this Board's interpretations of Rule 53 or in past practices of sufficient uniformity and duration as to amount to a mutual understanding to that effect. No such award has been called to our attention, and the only evidence of past practices is that in five instances, twice in 1938, once in 1939, and twice in 1940, this carrier paid the moving costs of other employes required to change their places of residence by reason of transfers. There is no showing that these isolated instances conformed to any general or uniform practice, or as to the ratio of those cases to others in which reimbursement was refused. The carrier asserts the instances referred to constituted only "a few cases"; that "the great majority were handled in accordance with the rules," and that "there have been hundreds of others where the rule was applied without any exception being made or asked for by the employes involved." Five isolated cases, spread over a period of three years, among hundreds of others similarly situated, are not, in our opinion, sufficient to establish a binding practice contrary to the clear import of Rule 53.

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 employes involved in this dispute are respectively carrier and employes 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 there is no evidence that the carrier violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1944.