Award No. 2670
Docket No. CL-2670

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

ILLINOIS CENTRAL RAILROAD COMPANY

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

STATEMENT OF CLAIM: (a) Is the carrier required to compensate employes for eight hours when they lay off or are absent voluntarily for a part of their regular assignment?

(b) When all employes under a given roster are working their regular assignments of eight hours and overtime and cannot handle the volume of business, and employes from adjacent rosters who have worked eight hours under their regular assignments volunteer to work overtime to help out, is the carrier required to:

(1) Guarantee such employes eight hours beyond their regular assignments?

(2) Compensate such employes at overtime rates based on their own rate when it is higher than freight handlers' rate?

CARRIER'S STATEMENT OF FACTS: There is an agreement bearing date of June 23, 1922, revised September 1, 1927, as to rules governing hours of service and working conditions.

Rule 28 reads:

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

Rule 34 reads:

"Employes required to report for work at regular starting time, 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

Provisions of Rule 37 are clear and no comment is needed in connection therewith.

Provisions of Rule 39 provides that overtime worked must be authorized by proper authority. The carrier in arranging with employes to work overtime therefore authorize overtime payment in accordance with this rule.

When the provisions of Rules 39 and 50 are considered together they certainly provide for the payment of overtime worked at the office clerks' overtime rate when it is higher than the freight handlers overtime rate.

As stated in our Statement of Facts, carrier's Statement of Claim, Items (a) and (b-1) are not representative of any dispute pending or unadjusted between the parties, therefore, there is no dispute pending before this Board as contemplated by Section 3 (i) of the Railway Labor Act, as amended, and to avoid doing violence to the agreement carrier's claim in respect to both Sections (a) and (b-1) should be dismissed. Item (b-2) of carrier's Statement of Claim is representative of a dispute pending and in process of handling on the property, and where carrier is primarily responsible for the proper application of the agreement and the rules thereof can only be changed as provided in Rule 64, employes feel that the question raised by the carrier in this Section of its claim must properly be answered in the affirmative.

OPINION OF BOARD: Normally, the carrier employs about 350 freight handlers at its outbound freight house and 150 at its inbound freight house located on South Water Street, in Chicago. Due to the war, however, the volume of shipments handled at that point increased to such an extent that there was a labor shortage ranging from 25 to 150 men, resulting in an average of 128 cars of freight being carried over each day. In an effort to alleviate this condition the carrier advertised in the newspapers for additional employes and asked its clerical workers to volunteer to serve as freight handlers after their regular hours. Beginning on February 20, 1943, the carrier employed some 50 to 75 high school and college students as freight handlers. These were given assigned hours from 9:00 A. M. to 6:00 P. M., with one hour for lunch, but it was generally understood by all parties concerned that such employes would not report for work until after school, usually between 1:30 and 3:00 P. M. They were paid at the established straight time rate for the hours worked before their regular quitting time (6:00 P. M.) and at overtime rates thereafter. On September 1, 1943, and again on December 15, 1943, the carrier posted bulletins addressed to certain designated employes in other departments asking them to volunteer to work as freight handlers after their regular hours from 6:30 to 9:30 P. M. at time and one-half, based on freight handlers hourly rate. A number of such employes responded to this request.

A controversy having arisen as to the application of the Agreement to the situations stated above, the carrier instituted this proceeding to obtain the answers of this Board to certain specific questions stated in the claim. Such a proceeding has heretofore been recognized as proper. See Award 2436.

We shall now address ourselves to the first inquiry which, as applied to the facts summarized above, is whether the carrier is obligated to compensate said student employes for full eight hours for the days on which they worked. In support of its contention for an affirmative answer the organization relies upon Rules 28 and 35 and says that the carrier's conduct amounted to a subterfuge whereby said rules were evaded. It is urged, in this connection, that Rule 28 guaranteed these employes a full eight-hour pay for each day they worked, whether they worked full eight hours or not.

One of the evident purposes of Rule 28 is to establish a basis for applying the pro rata rate and to protect the employe's right to overtime pay when in excess of eight hours are worked. The rule does not undertake to say under what circumstances, if any, less than eight hours' work shall entitle the

employe to a full day's work. However, under a rule more favorable to an employe, providing that, "Eight hours **or less** shall constitute a day's work," (our emphasis), it was held by this Board in Award 1234 that the employe was not entitled to pay for that part of an eight-hour day during which he was voluntarily absent from work. We are not impressed with the contention that carrier perpetrated a subterfuge to defeat the rule. At most, it merely acquiesced, under the pressure of necessity, to the conditions imposed by these student employes, namely, that they would only accept employment if they might exercise the same quality of right enjoyed by other employes by voluntarily remaining away from work until the end of their school day. Had the carrier acted as the organization urges that it should, by assigning these employes hours beginning when they reported for work, the conditions would have been less favorable to the workers. Under the assignment as made, the employes became entitled to overtime after 6:00 P. M., which would not have been true if the assignment had commenced at 1:30 or 3:00 P. M. We must hold that, under the circumstances of this case, these employes are in the same situation as one who voluntarily absents himself from work during his assigned hours. So far as we are advised, in such situations it has uniformly been held that such an employe is only entitled to pay for the hours actually worked, notwithstanding a rule of the import of Rule 28. Interrogatory (a) is therefore answered in the negative.

Both aspects of interrogatory (b) may be resolved by determining whether there is any substantial difference in respect to the rights of an employe who is **assigned** to another position, within the meaning of Rule 50, and one who **volunteers** to perform work, under the circumstances disclosed by this case. Rule 50 clearly covers employes temporarily or permanently **assigned** to higher and lower rated positions. So far as we have been able to ascertain the Agreement does not take note of the status of those who merely **volunteer** for such work. One of the dictionary definitions of the word "assign" is, "to appoint or consign one to a post or duty; also to prescribe, as a course of action or a task." This meaning is hardly compatible with that of "volunteer," which is "to enter into, or offer one's self for, any service of one's own free will, without compulsion." We are of the conviction that, as applied to the Agreement before us, "assigned" must mean appointed or designated under such circumstances as the employe is under a contractual obligation to comply. This is corroborated by the fact, that, under some situations, an employe may be assigned to, and thereby required to fill, positions that are more arduous and exacting than his regular employment, and which he might not otherwise freely choose to occupy.

While, as already noted, the Agreement appears to be silent on the subject of volunteers, we think, nevertheless, that the carrier may not, by the acceptance of the proffer of such services, create a situation that may deprive other employes, under the Agreement, of any substantial contractual right or advantage. Such a result is suggested on behalf of the organization but is not supported by the facts. The seniority of the regularly employed freight handlers was not here affected. The wages paid to the two groups for the services performed were the same. While the Agreement is between the carrier and the organization and the latter has the right to insist upon its faithful performance, even over the acquiescence of the employes covered thereby, we are not free to extend its scope to matters not embraced within its terms. Interrogatories (b)-(1) and (b)-(2) are each likewise answered in the negative.

We do not share the fears entertained by the organization that an award of this character will undermine the Agreement and lead to wide abuses. Precedents must always be weighed and evaluated in the light of the facts upon which they are predicated. The pressing emergency, arising as it did out of the abnormal burdens imposed upon a common carrier during a great national crisis is, of itself, a strict limitation upon the scope and consequences of this decision.

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 each of the interrogatories propounded in the statement of the claim are answered in the negative.

AWARD

Position of Carrier sustained as an interpretation of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.