Award No. 3661

Docket No. CL-3674

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood:

(1) The Carrier violated the rules of the Clerks' Agreement when it declined to pay certain baggage and mail handlers, gatemen, telephone clerks and telephone operators at Central Station, Louisville, Ky., for various dates from March 7 to 13, 1945, inclusive during period of high water, and

(2) The 34 named employes who were regularly assigned to seven day positions be reimbursed for wage losses suffered during such period.

EMPLOYES' STATEMENT OF FACTS: The existing agreement between the parties, effective June 23, 1922, revised Sept. 1, 1927, containing 64 rules. Rule 34 and 42 thereof read:

"Rule 34—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 four (4) hours shall be 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 42—Sunday and Holiday Work—Work performed on Sundays and the following legal holidays—namely, New Years Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday, if possible and if required to work on such regularly assigned seventh day off duty, will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

formulated by the Arbitration Board, sets forth the meaning of the term "conditions beyond control of the Carrier" and specific reference is made to "acts of Providence such as floods . . .". It was recognized in this Award that a flood is beyond the control of the Carrier.

Further, on this property with the assistance of a Mediator, the following agreement was reached between the employes herein involved and the Carrier to dispose of a dispute arising with regard to the application of the effective rules at Stuyvesant Docks, New Orleans, Louisiana. The Mediation Award in that case was as follows:

> "(1) Effective June 1, 1944, the provisions of the agreement between the employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes and the Illinois Central Railroad Company dated June 23, 1922, revised September 1, 1927, shall be applied to laborers and cleaners of the Illinois Central Railroad at the Stuyvesant Docks, New Orleans, La., who have heretofore been excepted from the application of the agreement.
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> (4) In applying the provisions of Rule 34 of the agreement due consideration will be given to situations where there is no service to be performed account of delays in arrival and departure of boats at the Stuyvesant Docks beyond the regular starting time of the laborers and cleaners covered by this agreement, or on account of fires, floods, tornados, and other acts of Providence, over which the carrier has no control."

This Board has frequently and consistently held that no liability accrues to a Carrier by reason of an employe's absence of such employe's own volition. In fact, in its Award 2670, involving the same parties and the same agreement it was held that an employe having a regular assignment but who, for reasons or purposes of his own, did not report at the regular starting time of his regular assignment had no valid claim to compensation for the period during which he did not render work or service. This is further confirmed by this Division's Award No. 1234.

There is nothing in evidence that even hints that the employes for whom claim has been presented rendered any work or service on the days in question. They did not, in fact, render any work or service.

It has been so frequently and consistently held by this and other Divisions of the National Railroad Adjustment Board that agreements are to be applied "from their four corners," that it is not disputable. It, therefore, follows that Rule 34, by virtue of the specific provisions thereof, takes effect when the specific conditions enumerated therein make their appearance and, this being so, there can be no valid claim for any employe, who absented himself from his regular assignment by reason of the conditions which existed and which were by their nature beyond the control of the Carrier.

It is the position of the Carrier that, based on the precedents established by this Board, by virtue of the agreement existing between the Carrier and the employes on this property, and the flood condition prevailing during the period of the claim, the only findings this Division may return in this claim are to answer the Employes' claims (1) and (2) in the negative.

OPINION OF BOARD: The facts are mostly admitted. It seems that commencing on the evening of March 6, 1945, the Carrier's property, including its central station, located at Louisville, Kentucky, became flooded by waters from the Ohio river so that they could not be used for a period from March 7 to 13, 1945, inclusive. It further appears that the work points of all the employes here involved were under water and inaccessible on the dates for which pay is claimed and no work or service was rendered by the claimants at the points and on the dates specified in their claim.

The record further reflects that all the employes referred to in this claim were told on March 6 that there would be no work for them the next day nor thereafter until they were notified. They were apparently notified and did return to work on the 14th. It also seems logical, from the claim filed, that some of the employes worked part of the time during this period but that becomes immaterial under the views of this Opinion.

The parties were working under an Agreement effective as of June 23, 1922, but revised September 1, 1927. From the record it appears that these employes were all in that class necessary to the continuous operation of the Carrier and their positions are so-called seven-day positions with each employe assigned to work six days a week. During the time here in question the positions of these claimants were neither abolished nor did they resign or ask for time off.

Rule 42 of the Agreement is as follows:

"Sunday and Holiday Work—Work performed on Sundays and the following legal holidays—namely, New Year's day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for a straight time rate."

Rule 43 of the Agreement is as follows:

"Basis of Pay—Employes covered by groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly, or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly, or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

It is the position of the claimants that under these two rules of their Agreement that unless their positions are actually abolished, which is not the situation here, that positions of the nature which they hold must be regularly worked regardless of what happens.

On the other hand the Carrier contends that Rule 34 is applicable here and specifically provides what may be done when work is prevented by conditions beyond control of the Carrier.

Rule 34 provides as follows:

"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."

That the conditions existing on the Carrier's property during the period here involved are conditions beyond control of the Carrier there can be no doubt.

The question involved is do the provisions of Rule 34 here apply and control.

From a reading of the Agreement as a whole and particularly Rule 42, it is apparent that the very purpose of the provisions with reference to "employes necessary to the continuous operation of the carrier and who are regularly assigned to such service," is to provide for uninterrupted employment. That is the basis for obtaining the regular straight time for work performed on Sundays.

Construing this standard rule this Division has repeatedly laid down the elements that go with a position necessary to the continuous operation of the carrier. They are:

(a) The position must be worked seven days a week.

(b) There must be a regularly assigned incumbent to it.

(c) The incumbent must be assigned one regular day off in seven.

(d) The incumbent's day off must be filled by a regularly assigned employe. (See Awards 750 and 2536)

This type of position cannot be blanked in whole or in part as its very purpose is to provide regular employment for the employe in return for which the carrier gets Sunday work at the regular rate.

That this constuction was understood by the parties is fully evidenced by Rule 43. This rule expressly covers employes in groups 1 and 2 of Rule 1, which classification includes these claimants. This rule guarantees them continuous employment with the one exemption as therein provided and thereby limits the exceptions thereto. In Rule 43 it is provided; "Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

Of course, as contended by the Carrier, the specific language in Rule 34 means exactly what it says and should be so applied when the rule is applicable. There are many other employes covered by the Agreement to whom it may be applicable but that question we are not called upon to decide here. What we do here decide is that it is not applicable to those employes who are within the provision of Rules 42 and 43.

We therefore come to the conclusion that the employes here involved, being within the provision of Rules 42 and 43 of the Agreement that their employment cannot be interrupted except for the one reason as therein provided and that the provisions of Rule 34, with reference to conditions beyond the control of the Carrier, are not applicable to them.

The claim must therefore be sustained.

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 the Carrier violated the Agreement as contended by the Petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of October, 1947.

DISSENT TO AWARD 3661, DOCKET CL-3674

Regardless of the inability of the Carrier to provide service due to flood conditions and the admission of the employes that they could not reach their place of work for the same reason, the conclusion was reached that, being within the provisions of Rules 42 and 43, claimants' employment could not be interrupted and the provisions of Rule 34 are not applicable.

Rule 34, titled "Reporting and Not Used," is all embracive as to its object, viz., its stipulation that when required-reporting employes are prevented from performing service by conditions beyond control of the Carrier, such employes would receive payment therefor as specified and the Carrier, of course, would not be obligated for any payment in excess of that specified.

That rule, because of its stipulated agreement for pay for time held (if necessary without work), was not intended to be modified by Rule 42, 43, or other rules of the Agreement relating to periods of and pay for time worked.

The award misconstrues the Agreement.

s/ C. P. Dugan
s/ R. F. Ray
s/ A. H. Jones
s/ R. H. Allison
s/ C. C. Cook