Award No. 4278
Docket No. CL-4202

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO,UVALDE & GULF RR CO.; THE ORANGE & NORTHWESTERN RR CO.; IBERIA, ST. MARY & EASTERN RR CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; IBERIA & NORTHERN RR CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier is violating the Clerks' Agreement at Mart, Texas by using a person not covered by that agreement, and who holds no seniority rights thereunder, to relieve regular employes who are covered by the Clerks' Agreement.

Also

(b) Claim that all employes covered by the Clerks' Agreement, who have been improperly relieved, be paid at the rate of time and one-half for each day such violation occurs.

EMPLOYES' STATEMENT OF FACTS: At the time this claim arose there were four positions at Mart, Texas considered as necessary to the continuous operation of the Carrier and assigned to work 365 days annually. Those positions are:

Transfer Clerk—Group One
Yard Clerk —Group One
Callers (2) —Group Two

3. There has been no violation of the Houston Extra Board Agreement as alleged by the Employes. No employes working on that extra board were or are available to protect the service at Mart.

4. Rule 25 (b) cited by the Employes is not only not applicable but obviously is not workable in so far as relieving occupants of 7-day-per-week positions on their assigned rest days. The rule was not designed nor intended for that purpose.

5. Rule 19 (c) cited by the Employes as having been violated is not involved as the Carrier has shown that no furloughed employes were or are available to perform the relief work at Mart.

6. The contention and claim of the Employes is nothing more or less than an attempt to defeat the purpose and intent of the rest day rule with the obvious goal of materially increasing the earnings of these employes. In light of the record this can be the only logical conclusion.

When consideration is given to all the facts in the case as set forth in the foregoing but one logical conclusion can be reached—that the contention and claim of the Employes is not only without basis under any existing agreement between the Carrier and the Clerks' Organization, but that it is nothing more nor less than a subterfuge to obtain an increase in compensation paid the employes they represent. Therefore, it is the position of the Carrier that the contention of the Employes be entirely and unqualifiedly dismissed, and the accompanying claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is presented on behalf of four regularly assigned employes for compensation by reason of not having been assigned to work their rest days on seven day positions necessary to the continuous operation of the Carrier at Mart, Texas. The positions involved were:

Transfer Clerk—Group One
Yard Clerk —Group One
Callers (2) —Group Two

It appears that Carrier began using a furloughed brakeman to relieve both Group One, Clerks, and the Group Two, Callers, and later used a person with employe status but no seniority rights under the Clerks' Agreement to perform the work of relieving said employes.

The contentions of the parties, briefly stated, are these: The Organization asserts that the work should be assigned to employes holding seniority rights under the Agreement and the Carrier contends that under the provisions of Rule 3 (a) of the Agreement effective November 29, 1944, the use of a person having an employe status for the performance of such relief work is permissible.

Rule 3 (a) reads as follows:

> "An individual acquires an employe status at the time his pay starts, subject to the provisions of Rule 64, and until a seniority date is established such employes will work and be assigned on the basis of the date they established an employe status if work and assignment is available under the rules of the agreement."

It is of importance to analyze the contention of the Carrier in the first instance for if it is correct the claim must be denied. Is Rule 3 (a) applicable in a situation such as is presented in the instant case? The language of the rule is very general and at first blush gives plausibility to the Carrier's position. However, it is limited by other provisions of the Agreement and by interpretations placed upon the rule by the parties themselves. First looking to the Agreement we find the extra board provision in Rule 25 which reads as follows:

"(a) When it is mutually agreed, an extra board will be maintained and rules governing the manner of working extra board employes will be established in writing.

(b) Until an agreement is reached establishing an extra board, all temporary positions and vacancies will be filled by rearrangement of the regular forces in that office, giving senior employes their preference. The senior employe, unassigned on that roster, will be called to fill the vacancy left after rearrangement of the regular force.

(c) If there are no available employes holding seniority in that group, senior employes in other groups, who desire to perform extra work, will be called."

Now this rule places a very definite limitation on Rule 3 (a). If it were permissible to assign people with an employe status to all work within the scope of the Agreement there would be no occasion to require agreement with respect to extra board employes. It would be unnecessary to provide for a manner of permitting employes in one Group to perform work of another Group as outlined in subdivision (c) of that rule. If Carrier considered Rule 3 applicable to the present situation there would have been no need for its Chief Personnel Officer to issue the following instructions which are quoted from the record herein with respect to relief of employes on rest days:

"It has also been explained to you that where you have as many as six, or even five positions coming within the classification of those necessary to the continuous operation of the Carrier, working on the same seniority roster and included in the same group classification. You should arrange to, where possible, assign a so-called swing man for the purpose of relieving such employes on their assigned day off duty, thereby avoiding the payment of time and one-half to such employes who otherwise would be required to work on there assigned day off duty."

If the Carrier's contention were correct, persons holding employe status under the Agreement could perform work indiscriminately in any Group classification, something which the Carrier recognizes in its quoted instructions is not permissible under the Agreement. (See also Award 2706). We think it is obvious that Rule 3 (a) both because of the limitations contained in the Agreement itself and the Carrier's own interpretation thereof does not permit the action taken by the Carrier in this instance. The rule apparently is designed to cover the use of new employes in work for the performance of which there are no individuals holding seniority rights either willing, available, or entitled.

If Rule 3 (a) is not applicable and we do not believe that it is, then it was Carrier's duty to assign the relief work to employes holding seniority rights in the district and in the appropriate Group as provided in the Agreement. This the Carrier did not do and hence the Agreement was violated. We recognize the force of the Carrier's argument with respect to affording a day of rest in seven to those employes regularly assigned to a seven-day position necessary to the continuous operation of the railroad. However, that laudable purpose should be achieved in compliance with the terms of the Agreement and seniority rights and other important rights of the employes cannot be subverted to its achievement. The remedy for this situation is by negotiation and not by an attempt to apply the Agreement in a manner contrary to its intendment.

It follows from what has been said above that an affirmative award is required and the claim is therefore 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of January, 1949.