

Award No. 4666

Docket No. CL-4690

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee.

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules Agreement and Understandings:

1—When on January 21, 1948, the starting force at Wayne Junction Transfer was arbitrarily reduced from thirteen to twelve regularly assigned gangs; and subsequently increased by two extra gangs on February 3, 1948.

2—That the Carrier be required to compensate all employees who were adversely affected for each and every day the regularly assigned thirteenth gang was discontinued between January 21st and February 2nd, 1948, by reasons of the Carriers' actions.

3—That the Carrier continued to violate the Agreement when they established such regularly assigned thirteenth gang as extra under date of February 3, 1948, and continued it as an extra, unassigned gang until advertised and established as a regularly assigned gang on April 15, 1948.

4—That the Carrier be required to compensate the successful applicants of Bulletin No. 20 for each and every day between February 3, 1948 and April 15, 1948 that they were adversely affected by reason of the Carrier's actions.

EMPLOYEES' STATEMENT OF FACTS: On January 1, 1948 the established Platform Force at Wayne Junction was thirteen (13) regularly assigned gangs under the Memorandum of Understanding dated April 1, 1937. On January 7, 1948 the Division Chairman of the Brotherhood received a request that he concur in the reduction of forces at Wayne Junction Transfer to twelve (12) gangs, based on the number of cars left over at 5 P.M., on January 2nd, 3rd, 5th and 6th, 1948. Upon investigating the matter, the Division Chairman verbally advised the Superintendent of the Philadelphia Division that, on the basis of his investigation, he could not concur in the proposed reduction of forces upon the basis outlined by the Superintendent. On January 14th, 1948, the Division Chairman again received advice that the force would be reduced from thirteen (13) gangs to twelve (12) gangs at the close of business on January 20th, 1948. Again the Division Chairman verbally protested,

the period February 3rd to April 15th, 1948 were necessary to take care of the volume of freight to be handled and that the use of these additional gangs was in accordance and in compliance with the Memorandum of Understanding and the practice in effect previously. Therefore, there is no merit or justification for the claim as submitted, and Carrier requests the Board to so find and deny same in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of this case are not in dispute and will be briefly stated. On January 21, 1948 the starting force at Wayne Junction Transfer was reduced from 13 to 12 regularly assigned gangs. These 12 gangs continued to work until February 3, 1948 when 2 extra gangs were added to the starting force, and on February 10, 1948 another extra gang was added to the starting force.

The first question before the Board is whether the Carrier violated the Agreement when on January 21, 1948 it reduced the regularly assigned gangs from 13 to 12 gangs. It is agreed by the parties that the Memorandum of Understanding of April 1, 1937 concerning platform gangs is primarily controlling in this claim. (Sec. (a) of that Agreement is quoted:

"(a) The minimum number of platform positions worked during any day of the last month of the quarter will be considered as establishing the number of regularly assigned positions for the succeeding quarter, except, however, that this number may be reduced, if necessity should arise, by posting notice of the abolishment of such positions as are not needed, the remaining number of positions to be known as the regular established platform force."

The above quoted paragraph (a) specifically provides in clear and unambiguous terms that the minimum number of gangs worked during any day of the last month of the quarter, December 1947 in this case, will be considered as establishing the number of regularly assigned gangs for the succeeding quarter, January through March. The undisputed fact is that the number of gangs worked in December 1947 varied from 6 to 16. The application of paragraph (a) quoted above established 6 gangs as the regularly assigned number for the quarter in question, and any additional gangs were not required by the Agreement, and are not considered as regularly assigned under the Agreement. The Employees maintain that since the Carrier did not reduce the gangs to 6 on January 1, 1948, it waived the right to reduce the number of gangs. We cannot agree with this contention for nowhere in the Memorandum of Understanding of April 1, 1937 or in the Agreement is it stated that the number of gangs shall be reduced on the first day of the quarter; said Memorandum further gave the Carrier the right to reduce the number of gangs at any time during the quarter if the necessity arose. In this instance, the Carrier carried more regularly assigned gangs than the Agreement required of it, and it should not be penalized for so doing, and it was not a violation of the Schedule Agreement or the Memorandum of Understanding of April 1, 1937.

A second alleged violation is that when the Carrier used an extra gang on February 3, 1948, in lieu of the establishment of a 13th regularly assigned gang, it violated the Agreement. There is no stipulation in the Agreement or in the Memorandum of Understanding of April 1, 1937 that such additional gangs must be regularly assigned. To the contrary, paragraph (b) of said Understanding states that such extra gangs may be fluctuating in number. Within the quarter the regularly assigned gangs should be established by the formula in paragraph (a) with freedom to use a fluctuating number of gangs in addition thereto, as the necessities of business require, until the end of the quarter when again the requirements of paragraph (a) would establish the number of regularly assigned positions for the following quarter. The record shows that during March 1948, a minimum of 13 gangs were used and in accordance with the Understanding of April 1, 1937 the Carrier established a regularly assigned gang to bring the total number to

13 for the quarter starting April 1948. We are of the opinion that the acts of the Carrier complained of here are not in violation of the Agreement.

There is much discussion in the record as to whether the amount of work at Wayne Junction during the time in question necessitated the Carrier to abolish one gang on January 21, 1948. The Agreement and Understanding of April 1, 1937 is silent as to any stipulation as to the volume of business, or how it should be measured, which would make necessary the decrease or increase of the gangs used by the Carrier. This Division has no authority to substitute its judgment for that of the Carrier or to add terms to the Agreement negotiated by the parties. The claim must be denied.

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

That both parties to this dispute waived oral hearing thereon;

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of Decemer, 1949.