

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: It is the Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement at 28th Street Station, New York, N. Y. when on January 1, 1946, the Carrier started employes on higher rated positions and subsequently, assigned regular and additional force employes, to lower rated positions and reduced their rate of pay, and,

That Carrier shall compensate employes A. Meehan, J. Dempsey, A. McDonough, H. Ford, J. Spero, C. Ambroziak, G. Colden, J. Impellaria, Chas. Brug, W. Luers, W. Grazier, R. Lamb, J. White and all other employes so used, the difference between rates paid, and the higher rate retroactive to January 1st, 1946, and on all subsequent dates.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1st, 1946, rates of pay of Receiving and Delivery Clerks were in dispute. Employes filling such positions were paid checkers rate of pay. On or about April 10, 1946, rate for Receiving and Delivery Clerks was disposed of locally, and an adjustment of four cents (4c) per hour above Checker's rate was paid. Prior to January 1, 1947, only employes working as Receiving and Delivery Clerks handling East and Westbound L.C.L. freight were paid Receiving and Delivery Clerks rate. Employes working on Liftschultz east and westbound freight and Western Carloading westbound freight were paid as checkers. These employes started their daily assignment as Receiving and Delivery Clerks and during certain hours of their assignment, they dropped back to checker's positions, checking freight from cars to house floor.

The adjustment made on or about April 10, 1946, covered employes who started their daily assignments as Receiving and Delivery Clerks and the employes were paid the difference between checkers' rate and Receiving and Delivery Clerks' rate of four cents (4c) per hour for their full tour of duty of eight hours retroactive to September, 1945. Employes who started as checkers subsequently reduced were not involved at that time.

Certain employes were not included in the adjustment although they started their assignment as Receiving and Delivery Clerks and subsequently dropped back to Checkers', Callers', or Truckers' positions. Stated differently, these employes are started as Receiving and Delivery Clerks. As the receipt for or delivery of freight falls off, these men are reassigned to Checkers', Callers', or Truckers' positions. Later in the day, depending upon the number of trucks backed up to the platform, these men are again utilized as Receiving

time consumed with a minimum of one (1) hour. If in the aggregate the time consumed in performing higher rated work amounts to more than four (4) hours then the higher rate is paid for entire tour of duty.

Although Awards 1844 and 1845 applied to specific locations the negotiated pay basis resulting therefrom was made effective at all other major freight house operations which included 28th Street Station and up to now without a complaint.

The practice of using lower rated employees to temporarily assist higher rated employees has been in effect many years and prior to the time the Organization was recognized on the property. Such practice is permitted by Rule 34 reading as follows:

"Rule 34—Preservation of Rates

"Employees temporarily assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

"A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee.

"Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

Rule 34 clearly specifies how payment is to be made when employees are temporarily assigned to higher rated positions during the time occupied. However, there is nothing in Rule 34 that makes distinction as to when the work shall be done nor is there any time limitation fixed as to hours and minutes. Carrier asserts that Rule 34 permits the assigning of higher rated work without restriction as to when it is to be performed or the amount of time involved.

Management is charged with the responsibility of operating its property in an efficient and economical manner therefore it is necessary to determine to the best of its ability the number of employees of a given classification required to perform a certain operation, consistent with various working agreements. The Carrier is not required by any rule or law to hire more employees in a given classification than necessary to efficiently conduct its business. It appears that the organization is here attempting to take this control away from the Carrier and have for itself full determination as to the number of employees to be worked and their classifications.

Carrier does not need additional receiving and delivery clerks at its 28th Street freight station and so long as the employees at that location are properly compensated in accordance with the agreed to principles set forth in Awards 1844 and 1845 and Rule 34 there can be no justifiable basis for a claim. Carrier asserts that employees at 28th Street Station are properly compensated for any and all service performed.

These claims are without merit and should be denied for the reasons herein set forth.

(Exhibits not reproduced.)

OPINION OF BOARD: At 28th Street, New York, the Carrier operates a large freight handling facility requiring platform positions classified, and for pay purposes rated, as Receiving and Delivery Clerks, Checkers, Callers, Truckers and Stowers.

The first paragraph of Rule 34 of the current Agreement and in particular that portion thereof which we have underlined for purposes of emphasis is relied on by the Brotherhood as sustaining its claim. Such paragraph reads:

"Employees temporarily assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced." (Emphasis supplied).

Notwithstanding the claim is predicated upon the rule just quoted it is necessary, in order to fully comprehend the factual situation and issues involved to give further attention to the Agreement in force and effect. The positions described in the first paragraph of this Opinion were classified and rated in conformity with the provisions of Section (a) Rule 23, of such Agreement providing that regularly assigned Roster "B" platform positions will be established quarterly. Section (a) of the same rule contains 4 subdivisions. Subsections 1 and 2 are not material to the issues here involved. Subsection 3 provides the method of determining the number of regularly established 8 hour positions to be worked at each operating unit (here 28th Street Station) during the current quarter and expressly provides those positions are to be known as the regularly established Roster "B" platform positions for the unit involved. Subsection 4 recognizes the work of units coming within the purview of the rule is fluctuating and provides additional forces over and above those provided for in such section 3 may be worked to take care of extra work when needed. Section (b) of Rule 23 provides the regularly assigned Roster "B" platform positions will be filled in the regular manner as provided by the Agreement, i.e., by Bulletin in conformity with Rule 7 thereof, while Section (c) requires the additional forces to report regularly at a specified time at their place of employment for any available work and provides that if needed senior employees will be assigned to duty. In this connection it is interesting to note that Rule 7, heretofore mentioned, requiring the bulletining of positions, contains an express exception to the effect that additional positions, provided for by Rule 23 (a) 4 need not be bulletined but are to be filled in the manner required by the provisions of Section (c).

Having referred to Rules of the Agreement bearing on the issues we now turn to the facts giving rise to the instant controversy. Those not in dispute can be stated thus: for sometime prior to the filing of the claim on the property, due to the manner in which freight came into the 28th Street Station, New York, it was necessary for the Carrier at the start of each day's work to utilize a larger force of Receiving and Delivery Clerks than the regularly assigned force established under the provisions of Rule 23(a) 3. Employees, regardless of their classified status as regularly assigned or as extra assigned employees, were required by the Carrier to commence work, at the start of each day's operation as Receiving and Delivery Clerks. When the rush of business subsided such employees as were regularly assigned Checkers, Callers, Stowers and Truckers, were returned to their regular assignments. Additional or extra force employees were also returned to lower rated positions. The employees so used were paid at the Receiving and Delivery Clerk rate for the time spent while assigned to such positions and at the rate of the position to which returned for the balance of the day, except that if any employee worked longer than four hours as a Receiving Clerk on any one day he was paid at the latter position's rate for a full day.

The Brotherhood asserts the language of Rule 34 is very clear and asserts such rule contemplates an employee temporarily assigned to a higher rated position will receive the higher rate while occupying such position and that one temporarily assigned to a lower rated position will not have his rate of pay reduced. We agree and add it necessarily follows from the very same language that to come within the scope of the rule an employee in either of the mentioned categories must first have a permanent assignment. Apparently the Brotherhood recognizes the force and effect of what has just been stated for, when carefully analyzed, it appears that all contentions advanced by it

in the record and on oral argument, in support of its position the heretofore related practice followed by the Carrier resulted in a violation of Rule 34, are predicated entirely upon the premise that if a Roster "B" platform employe is required to commence work on a particular day as a Receiving and Delivery Clerk he acquires and holds, by virtue of that fact, a permanent assignment to that position for that day and hence, under the provisions of such rule, must be paid the rate of a Receiving and Delivery Clerk for an entire day even though he is returned to and works the major portion of such day in a lower rated platform position. Otherwise and differently stated the gist of the Brotherhood's position is the starting of work on a higher rated Roster "B" platform position fixed the assignment status of the employes herein involved even though at the time they commenced work on the dates here in question they had been assigned to lower rated platform positions under Rule 23 of the Agreement.

We are unable to find anything in the language of Rule 34, or for that matter elsewhere in the current Agreement, warranting a conclusion the fact the employes here involved were required to do the work of Receiving and Delivery Clerks at the commencement of their tours of duty on the days in question resulted in a permanent assignment to those higher rated positions if, in fact, on such days they were actually the holders of regular assignments to lower rated Roster "B" platform positions. In such a situation they were still the permanent occupants or holders of the lower rated positions and when returned thereto after completing the work of Receiving and Delivery Clerks it cannot be successfully argued they were being "temporarily assigned to lower rated positions" within the meaning of that term as used in Rule 34.

Upon resort to the record we are impelled to hold the employes involved were assigned to lower rated positions on the dates in question. The Carrier asserts and it is not refuted that 9 out of the 13 involved had bid in and were the holders of regular assignments, either as Checkers or Truckers, and that the 4 remaining were extra or additional force men who had been assigned as Truckers.

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 did not violate 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 27th day of November, 1950.