

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement effective December 1, 1943, amended July 1st, 1945:

- (a) When it removed Stowmen's work from regular assigned Stowmen, assigning said work to a Tonnage Gang.
- (b) That carrier compensate employees occupying positions of regular Stowmen (Messrs. Robinson, Harris and Hogue being so assigned as of date of this claim) at time and one-half for thirty (30) minutes each working day retroactive to May 17, 1947.
- (c) That carrier compensate employees occupying positions in the Tonnage Gang (Messrs. Toth, Patcher, Moore and Threatt, being so assigned as of date of this claim) at their average hourly earnings for one and one-half (1½) hours each working day retroactive to May 17, 1947, and,
- (d) That such payments claimed in Items (b) and (c) be applied to claimants and their successors, if there be any, from May 17, 1947 to date violation complained of is corrected.

EMPLOYEES' STATEMENT OF FACTS: This claim originated with the Employees (claimant's) on August 15, 1947, as evidenced by claimants Statements (Employees' Exhibit B (1)-(6) inclusive).

On August 16, 1947, and within the ninety (90) day limit prescribed in Rule 42, (Claims for Compensation), of our Agreement with the Carrier, the Employees' claims were presented to Agent Hine of the Carrier as evidenced by Local Chairman Jenkins' letter of that date. (Employees' Exhibit C).

Subsequent handling of the claim with Mr. Hine failed to compose it whereupon on January 17, 1948, it was formally appealed to Superintendent Clark. (Employees' Exhibit D) Superintendent Clark declined the claim as evidenced by his letter of February 24, 1948. (Employees' Exhibit E).

It will be noted in Mr. Clark's letter of February 24, that he commented only on that phase of the claim involving Stowmen and this necessitated further handling with the Division officials of the Carrier. Upon our request the Superintendent arranged to discuss claim in conference which was held

ing rules, rates of pay or working conditions, but on the contrary, amounts to an attempt to secure, by means of an award, a "Job Classification" rule which the Organization does not have. If such a rule is proposed it should be handled through negotiation as provided for in the Railway Labor Act, amended and not by the method here employed.

Carrier denies violation of any rule of the applicable agreement and asserts that claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends that the Carrier violated the rules of the Clerks' Agreement effective December 1, 1943, as amended July 1, 1945, by removing stowmen's work from regularly assigned stowmen and assigning it to a tonnage group.

The stowmen's claim originated when, as of May 14, 1947, Carrier changed their starting time from 7:00 A.M. to 7:30 A.M., pursuant to Rule 28, Starting Time, of the parties' effective Agreement and, at the same time, put on an additional tonnage gang who performed stowing and restowing of cars and work incident thereto, from 6:00 A.M. to 7:30 A.M. Because of these employees of the additional tonnage gang doing this work, the stowmen claim 30 minutes of overtime under Rule 20 (e).

The record discloses that stowmen have never exclusively performed all the work of stowing and restowing cars, and such work as is incident thereto, but that such work has also been performed by other Roster "B" platform employees, including those engaged in tonnage or piece work. We find nothing in the parties' effective Agreement, as amended, that prohibits the Carrier from continuing this practice.

Stowmen are entitled to perform this work in preference to employees under some other Agreement. It is work that should ordinarily be performed by stowmen but they have no exclusive right thereto. Consequently, it can properly be performed by other Roster "B" platform employees who have been doing it in the past. We find it is entirely proper for Carrier to assign such work to other Roster "B" platform employees in order to avoid the payment of overtime as long as the stowmen's regularly assigned positions remain. When Carrier can get work done at straight time rates without violating any provision of the parties' effective Agreement, it is within its province to do so. To do otherwise would be contrary to an efficient operation thereof. See Award 4969 of this Division.

What has been said of the Carrier's right to have other Roster "B" platform employees do stowing and restowing, and all work incident thereto, applies to the members of the additional tonnage gang that was put on as of May 14, 1947 with a starting time of 6:00 A.M., who are here claiming that their performing such work from 6:00 A.M. to 7:30 A.M. was contrary to the provisions of Rule 21.

Nor does Rule 23 (d) provide that employees engaged in tonnage or piece work shall be exclusively limited thereto. It does provide that when employees are paid on a tonnage or piece work basis that they will be paid for the actual tonnage or piece work on a daily basis, which in no case is to be less than they would have earned at their hourly, daily or monthly rate. The rule contemplates different rates of pay depending upon the type of work performed. The record shows that in keeping therewith the Carrier established and pays different rates depending upon the type of work performed.

We find the Carrier had the right to use these employees as it did and to pay them accordingly. There is nothing in the rules of the parties' effective Agreement, as amended, that prohibits its doing so.

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 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 Carrier has not violated the parties' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of November, 1950.