Award No. 6033

Docket No. CL-6040

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

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

(a) The effective Agreement between the parties was violated by the Carrier at Cedar Hill Transfer Platform, Montowese, Connecticut, on October 7, 9, 10, 1950 and subsequent dates thereafter, when it employed individuals outside the scope and application of the Agreement, and allowed such "outsiders" to perform work covered thereby; and

(b) That each affected employe, with established seniority, at Cedar Hill Transfer Platform be compensated for a day's pay at the punitive rate for not being called to perform the work in question on Saturday, October 7, 1950, and, also, a day's pay at punitive rates for all subsequent Saturdays until the condition has been corrected; and

(c) That the Senior Group 3 employes at Cedar Hill Transfer who are affected by the violation be compensated at the punitive rate for all time worked by these "outsiders" on October 9, 10 and subsequent thereto until the condition is corrected.

Note: The employes affected by the violation and entitled to receive payment of claims for the days and hours involved, to be determined in each instance by a joint check of the seniority roster and Carrier's payrolls.

EMPLOYES' STATEMENT OF FACTS: On October 8, 1950, the Carrier ran an ad in the New Haven Register under "Help Wanted—Male 33" reading as follows:

"Laborers

"We have spare work at Cedar Hill Transfer, Montowses, on Monday and Tuesday, working from 8 A. M. to 4 P. M. Transportation furnished from New Haven Station and return, train leaving at 7:25 A. M. Rate per hour $1.354. Report to Freight Agent J. J. McKeon.

In Award 4823 regular occupants of positions claimed Sunday work should be awarded to them on an overtime basis rather than calling extra or furloughed employes. Denying the claim this Division said:

> "We feel obliged to again point out that the motivating reason for the rest day rule was to afford one day of rest each week to employes. A penalty rate for working an employe on his rest day was established to coerce compliance with the rule. The intent of this rule and the objective sought by it should be carried out whenever possible. We think the spirit of the rule as well as the letter of it, requires the Carrier to use extra employes in preference to the occupants of the regular assigned positions under the Agreement for rest day work when they are available, and thereby afford the occupants of six day positions the days of rest contemplated by the Agreement."

Again in Award 4948 the issue was whether snow removal work in the territory of a section crew which had already been on duty sixteen hours should have been done by continuing the crew at double time rates or whether a neighboring section crew should be called to do it. The Board again denied the claim and said:

> "We must again reiterate that the purpose of the overtime rule is not to create work for which punitive compensation can be demanded. Its purpose is to penalize the Carrier for working an employe for more than eight hours in any day and thereby coerce it into avoiding so doing. Award 4194. Consequently a Carrier should use an extra or furloughed man rather than to work another employe more than eight hours. It is only when the latter cannot be avoided that the Carrier can properly work an employe more than eight hours by paying the punitive rate for the hours worked in excess of eight.
>
> "But overtime as such is not a matter of right. Where the necessities of a situation require that overtime be worked, then, and not until then, does the senior employe available acquire a right to perform it, assuming of course that there is no specific contract provision to the contrary."

CONCLUSION: The claim in this case is predicated upon a demand that Carrier rearrange the hours of its operations. We submit there is no rule of the Agreement or decision of this Board which withdraws from Carrier the right to schedule operations at the transfer to meet operating requirements. This being so, the claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here arose because on October 9 and 10, 1950, and subsequent dates, when the regular forces at Cedar Hill Transfer Platform were all scheduled to work, the Carrier hired additional laborers to augment its force to perform extra work required, some of such laborers having at the time employment with other employers.

Rule 68 provides a daily guarantee for laborers and then provides:

> "This guarantee will not be construed to apply to those who are employed to take care of the fluctuating work that cannot be han-

dled by regular forces. They will, however, be paid not less than four hours for service actually performed on any day except:

"1—This will apply only to what are regarded as standby fluctuating forces and not to students or part-time workers from other industries.

"2—Workers quitting in a shorter time of their own accord."

Certainly it is obvious that, by exception from the guarantee rule of workers hired to augment the regular force to meet service fluctuations and specifically further excepting "part-time workers from other industries," the parties were contemplating that the Carrier would continue to hire additional workers, including those from other industries, to augment its regular force to meet peak work requirements in the fluctuation of its service.

The fact that this facility in prior times has been operated six or seven days per week does not make this a six day operation forever. The Carrier decided to operate it only five days per week due to the prevalence of the five day week in industry in the area served, the reduced train schedules on week ends and the reduced week-end operations of the yard in which this transfer is located. We are unable to say on this record that the Carrier's action was arbitrary or contrary to the service requirements at this point.

Hence we find the claim to be without merit.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1953.