Award No. 6324

Docket No. CL-6427

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that:

(1) The Carrier violated Rules 2, 63 and other rules of the Agreement at Junction Transfer, Pa., when effective June 13, 1949, it abolished a full time eight (8) hour Tallyman position, and permitted William Bowcock, the incumbent, to accept an assignment with an understanding that he would only work and receive four (4) hours' pay daily.

(2) William Bowcock be paid a minimum of eight (8) hours' pay at $10.10 per day beginning with June 13, 1949, and continuing until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: On June 13, 1949, the position of Tallyman at Junction Transfer, Pa., was abolished. This position had been held by Claimant and while working the position he had spent the first four (4) hours daily checking the various sidings from Schenley to Herrs Island, and the balance of the day working on the platform at Junction Transfer Freight Station.

This position was classified as Tallyman, No. 72-1-655, rate $10.05 per day, 8:00 A. M. to 5:00 P. M. When position was abolished Mr. Bowcock's seniority was sufficient to permit him to hold a regular position at the Pittsburgh Freight Station, but as it was still necessary to have the track checking done at Junction Transfer, Claimant was permitted to continue the checking of the various sidings from Schenley to Herrs Island, which consumed four (4) hours per day, 7:00 A. M. to 11:00 A. M. for which he received four (4) hours' pay. He continued to work four (4) hours per day from June 13, 1949 through April 28, 1950, except for an aggregate of eight (8) days during the Spring of 1950.

CARRIER'S STATEMENT OF FACTS: On June 13, 1949, the position of Tallyman at Junction Transfer, Pa., was abolished. This position had been held by the claimant and while working the position he had spent the first four hours daily checking the various sidings from Schenley to Herrs Island and the balance of the day working on the platform at Junction

thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjjustment Board for decision.

(Exhibits not reproduced)

OPINION OF BOARD: On June 13, 1949, the Carrier abolished the eight hour per day position theretofore held by Claimant William Bowcock and beginning with this date he was **assigned** to work a total of only four hours each day, checking the various sidings from Schenley to Herrs Island, for which he was allowed four hours' pay per day. The parties are agreed that Claimant Bowcock performed the checking on a four-hour basis from June 13, 1949, through April 28, 1950, except for an aggregate of eight days during the Spring of 1950. The Employes now request payment for Claimant Bowcock for a daily minimum of eight hours or $10.10 per day for each day that work was performed on a four-hour basis.

The Employes rely upon Rule 2 of the applicable agreement, which Rule provides:

> "Except as otherwise provided in Rules 5, 7, and 9, eight (8) consecutive hours' work **or less,** exclusive of the meal period, shall constitute a day's work for which **eight (8) hours will be paid."** (Emphasis added)

None of the exceptions provided by Rules 5, 7 and 9 cover the instant situation. Moreover, that Rule 2 was violated seems to have been clearly recognized by the Carrier itself when it stated by letter of January 19, 1951, that "While **the agreement does not contemplate working employes on a four hour basis except under the conditions covered by Rule 9 (c), which is not applicable here,** this particular arrangement was made at the request of the claimant and for his benefit". (Emphosis added)

In regard to the Carrier's contention that the arrangement was made at the request of Claimant Bowcock, and in this connection it might be noted that there is serious conflict in the Record as to just who "originated" the plan, it is sufficient to note that the collective bargaining agreement cannot be varied by contract with individual employes. See Award 5460 and Awards cited therein. Serious harm might reasonably be expected untimately to come to employes as a group were the standards set out in the collective agreement left vulnerable to piecemeal disintegration as the result of individual agreements "waiving" rights under the collective agreement.

Nor does the Board find merit in the Carrier's contention that what it did here was permissible under Rule 53 of the agreement. As noted above, Rule 2 permits exceptions thereto only as provided by Rules 5, 7 and 9 of the agreement. Even assuming that Claimant Bowcock was an "incapacitated employe" within the sense of Rule 53, and the Record leaves doubt that he was, still Rule 53 seems to envision special attention as to the **type** of work to be assigned incapacitated employes rather than as to the number of hours of work for them. In any event, the specific wording of Rule 2 does not permit any exceptions thereto under Rule 53.

Finally, the Carrier seems especially disturbed that the Brotherhood herein makes a claim in behalf of Claimant Bowcock in spite of the fact that he consented to the four hour arrangement. The fact remains, however, that the Carrier violated the collective agreement and the Brotherhood has the responsibility of insisting that the agreement be complied with. Under Rule 2 Claimant Bowcock had a contractual right to eight (8) hours' pay, even though the Carrier required him to work only four. Nothing in the agreement requires the Carrier to work employes covered thereby a full eight hours per day but except as provided in Rule 5, 7 and 9, Rule 2 does require the Carrier to pay for eight hours even though the Carrier requires less than eight hours' work of the employe. Moreover, this Division said in Award 4962, "that the question whether there has been a violation of the contract is the

important thing and that the claim of a particular individual is of no concern to the Carrier since it cannot be required to pay but one claim". (Citations omitted).

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 as indicated in Opinion.

AWARD

Claim (1) sustained in accordance with Opinion and Findings.

Claim (2) sustained for each day Claimant Bowcock worked the four-hour assignment, less what the Carrier has already paid for such days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.