Award No. 6587

Docket No. CL-6445

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTHWESTERN RAILWAY 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 and continued to violate its agreement with the Brotherhood when on or about June 1, 1948, it began transferring work from the Proviso Freight Transfer Station, seniority district 7-B to several other seniority districts without negotiating or reaching an agreement with the Brotherhood, and that all such less than carload freight previously handled at Proviso and transferred from that seniority district by arbitrary direction of management be returned to Proviso immediately (this includes both eastbound (infreight) and westbound (out freight)), and;

(2) When the Carrier increased their rules violative action by transferring the work involved in connection with a vast number of cars (four hundred and fifty-nine cars on three days, July 10th, 11th and 12th), all of which were destined for handling at Proviso Freight Transfer Station, all freight handling employes at Proviso Freight Transfer Station, shall now be compensated at their prevailing rates for four hours punitive overtime for each working day commencing July 10, 1950, and continuing through July 24, 1950.

EMPLOYES' STATEMENT OF FACTS: The rules agreement in effect for employes of our craft and class on the Chicago and North Western Railway Company does not permit employes to be assigned to "Short Hour Days," and there had been no such assignments for many years. However, in the year 1949 and first part of 1950, account management informing us that the LCL business was decreasing in volume, we agreed to permit some "Short Hour Days" at the Proviso Freight Transfer Station because employes' earnings had been favorable during the war years, and we desired cooperating with management in every way possible until business increased to normal. We also felt that management, as well as our organization, did not want to see positions abolished which would mean the loss of qualified, capable employes.

These freight handlers at Proviso were working under an incentive method of compensation covered by a so-called "Tonnage Agreement," which permitted them to earn the equivalent to a minimum day's pay in four hours when a maximum effort was put forth constantly.

In no instance did the employes work in excess of eight hours on any day during the period July 10 to July 23, 1950 inclusive, and any claim on their part for four hours compensation at time and one-half rates is not based on any rules in agreement between the Carrier and the Brotherhood, because no overtime was worked, but is solely a request that the employes be given a bonus and the Carrier be penalized to the extent of four hours compensation at time and one-half rate for each employe on each day during period July 10 to July 23, 1950 that he worked at Proviso Freight Transfer Station.

POSITION OF CARRIER: As conclusively shown in Carrier's Statement of Facts, claim of the employes for compensation on basis of four hours at punitive rates for each day worked during period July 10 to July 23, 1950 inclusive, is not supported by any agreement between the Carrier and the Brotherhood, for the reason that the employes did not perform overtime service on any of such days which, under provisions of schedule rules, would entitle them to additional compensation.

Any loss of earnings by the employes as the result of their handling less than the minimum basic tons per day as agreed between the Carrier and the Brotherhood was the result of the employes' own action and not the result of any act on the part of the Carrier.

The Carrier of its own act did not violate any agreement between it and the Brotherhood. Any diversion of traffic from Proviso Freight Transfer Station to other stations was directly the result of the slow-down operations by the employes at Proviso Freight Transfer Station and was forced upon the Carrier in order that it could properly handle its business and satisfy its customers.

It is further the position of the Carrier that this Board cannot properly issue a sustaining award, for to do so would be compensating the employes for services not rendered, and there is no provision for such compensation in any agreement between the Carrier and the Brotherhood.

All data in support of the Carrier's position has been previously presented to the employes and is made a part of the particular question here in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The record in this case is long and on behalf of the parties extensive arguments have been made. The facts as contended by the respective parties are in brief as follows:

Petitioners contend on June 7, 1950 carrier caused an "All Concerned" notice to be issued advising freight handlers at Proviso Freight Transfer Station, seniority district 7-B, that effective June 12, 1950 there would be set up four hour or so-called short hour assignments. Also that on June 8 similar notice was likewise issued to take effect Tuesday, June 13. This action was immediately protested by General Chairman C. L. Dennis accusing Management of misrepresenting the L. C. L. merchandise picture at Proviso Transfer, to the Brotherhood during the two year period June, 1948 to June, 1950; therefore, Item (1) Statement of Claim. Alleging that carrier had broken faith with employes, as well as violating the Rules' Agreement as a result of carriers efforts to transfer, divert and by-pass work from Proviso to other points, while at the same time representing to the employes that L. C. L. business was decreasing.

On June 8, the Agent at Proviso cancelled his notice of the previous day with respect to "four hour assignments" stating the eight hour assignments outlined would remain in effect. Also on June 8, 1950 by Bulletin No. 746 the Carrier abolished 63 freight handlers positions at this facility.

In conference on June 9, 1950 the Brotherhood requested that all work which had been removed from that seniority district be returned, so that all freight handlers there would have a full eight hours, as provided by Rule 15—last paragraph—and Rule 27, September 1, 1949 Agreement and that if the involved work could not be returned to Proviso seniority district immediately, it desired to cancel the so-called Tonnage Agreement since a greater number of employes would be needed if paid on an hourly or daily basis than under the incentive or tonnage plan. On June 12, 1950, Bulletin No. 746-B, was issued by carrier cancelling its Bulletin Nos. 746 and 746-A. Also on June 15, 1950, carrier again abolished sixty-two positions.

Petitioner cites letters exchanged between representatives of the parties relative to numerous phases of the dispute dated in June and July of 1950. And it is contended carrier unilaterally transferred or diverted freight from this district commencing in June of 1948 which precipitated this entire controversy.

Respondent carrier also cites provisions of Rule 15, therefore, for convenience, the entire rule is set out in this Opinion:

"RULE 15—CONSOLIDATION OF OFFICES OR DISTRICTS

When two or more offices or departments involving separate seniority districts are consolidated, positions in the consolidated office will be assigned to the employes affected on the basis of a consolidated roster, subject to the provisions of Rule 16.

EXERCISE OF SENIORITY AS RESULT OF DIVERSION OF TRAFFIC

When a diversion of traffic results in the abolition of a majority of positions on one seniority roster, employes thus affected will be given employment in the seniority district benefited by said diversion of traffic on basis of seniority and qualification with employes in said district.

TRANSFER OF WORK

When a specific class of work involving employes in two or more seniority districts is consolidated or transferred from one seniority district to another, conferences will be held with general committee prior to change so that employes affected may be given proper consideration."

It is contended by carrier that prior to or about June 1, 1948, a study was made for the purpose of expediting the handling of freight by making overhead cars to be shipped direct from eastern points to carrier's property, such as Milwaukee and Green Bay, Wisconsin, etc. This was protested by employes as to shipping to points other than Proviso as it had previously been handled through this facility and would lesson earnings of employes. That through conferences and correspondence the result was the agreement on piece work or tonnage basis of payment which Petitioners later desired to cancel and established a daily basis of payment. This precipitated the controversy here and carrier invoked the services of the National Mediation Board on July 7, 1950, and that during the time set out in (2) of the claim the dispute was under the jurisdiction of the Board and during said time employes arbitrarily departed from the tonnage agreement and went to a day basis of work on July 10, 1950, continuing thereafter through July 23, 1950 and resuming the tonnage basis of payment for work on July 24, 1950. It is also alleged that during the time mentioned in (2) of the Claim, much less work was done at Proviso than the average over a period of time and further contending that the work was there to be done. Also that there existed no commitment on the part of carrier providing for handling through Proviso station any stated quantity of freight in terms of pounds, tons or cars, nor

anything in the contract as to the kind or class of commodity which was to be handled. That the last paragraph of Rule 15 (cited above) pointedly refers to the transfer of a "specific class of work" and does not deal in any respect with the use of overhead cars or the routing of traffic from the original loading point direct to destination or connection. That instances cited by Petitioners related to a "specific class of work" and studiously avoided in the argument in behalf of this claim, has been the provision of paragraph 1 of Rule 15 which reserves to carrier the right to make wholesale diversion of traffic with no restrictions whatever.

That the tonnage agreement contained a cancellation clause and the General Chairman at the time in question, July 10, 1950, did not request that the agreement be cancelled but "advised" the Management that it would be cancelled, however, in his letter of July 20, 1950, he states that he did not serve any notice of cancellation under Section 6, Railway Labor Act, as amended, as it was not necessary. And that such an extra-statutory concept is erroneous. Also citing the Mediation Agreement of July 25, 1950, in part, as follows:

> "4. The carrier will endeavor to make available sufficient tonnage at Proviso Freight Transfer Station so as to increase the 'ceiling' which each gang is permitted to handle until there is sufficient freight to permit 30 gangs to average approximately 56 tons per gang per day."

And that this was the first commitment by carrier on the question and this to the extent that "it would endeavor" to do so. That by reason of employes not doing the work available during time in question is sought to be made the basis for this claim. Cited on behalf of carrier is that only 16 2/3% of freight was handled on the west bound platform on July 14, 1950 in comparison with the tonnage handled by these same employes on June 30, 1950, also citing other days. Under the tonnage agreement, it is stated, a gang must average some 34 tons each day before they receive any benefits above the minimum daily wage rate, and that Petitioner has stated that a gang can handle 34 tons in 4 hours. That such failure during the time in question in (2) of Claim was due the Petitioners own acts which they now desire to submit as the basis for this claim. Citing in support thereof Award 4954 on the doctrine of estoppel. That Petitioners rely on Awards 4653 and 4667 dealing with the transfer of a specific class of work from a definite location within one seniority district to another definite location within a different seniority territory which was held to be improper and such a situation did not here exist.

It is the opinion of the Board that Petitioner under facts presented did not effectively cancel the tonnage agreement. That work was available at Proviso Transfer, during the time in question. That in Claim (1) the burden to establish the same is on Petitioners. We find the proof offered not sufficient upon which to base a sustaining award.

That under (2) of the Claim the request for 4 hours' compensation at time and one-half rates is not well founded and the facts as applied to rules cited do not warrant a sustaining award. Also taken into consideration is the fact that during the time in question phases of this controversy were under the jurisdiction of the National Mediation Board, the result of which was the Mediation Agreement referred to herein and which covered the subject matter here under consideration.

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

Claim denied in accordance with Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.