

Award No. 7166
Docket No. CL-7020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

1) Carrier violated Clerks' Rules Agreement when, on February 5, 1952, it removed employes from their regularly assigned positions in House No. 3 at Union Street, Chicago, Illinois, and required those employes to perform extra work at another location to which they were not regularly assigned.

2) Carrier shall therefore compensate each of the following employes thus removed for an additional eight (8) hours at the straight time rate of their respective positions for Tuesday, February 5, 1952:

F. Quinlivan	Checker	Position No. 131
L. Trifilio	Checker	Position No. 168
O. William	Checker	Position No. 173
G. Derron	Caller	Position No. 197
J. Schroeder	Motor Operator	Position No. 190
W. Kocan	Motor Operator	Position No. 230
R. Williams	Motor Operator	Position No. 218
L. Kieselica	Stower	Position No. 262
Ramon Ramirez	Caller	Position No. 440
G. H. Herman	Stower	Position No. 516
H. Wilson	Stower	Position No. 521
I. Miller	Caller	Position No. 522

3) Carrier shall also compensate each of the following employes for eight (8) hours at the punitive rate of their respective positions for Tuesday, February 5, 1952:

Angelo Poulos	Check Clerk	Position No. 209
H. Stenzal	Check Clerk	Position No. 232
F. S. Ferraro	Check Clerk	Position No. 270
George Chelius	Motor Operator	Position No. 305
August LaRocco	Check Clerk	Position No. 307
J. Medina	Motor Operator	Position No. 401

Joseph Matchak	Motor Operator	Position No. 418
A. Wolf	Caller	Position No. 426
J. Raduka	Motor Operator	Position No. 433
T. LaRocco	Caller	Position No. 438
E. Romanelli	Motor Operator	Position No. 452
F. J. Wendland, Jr.	Check Clerk	

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains at Union Street, Chicago, Illinois, in addition to others, the following facilities which are involved in this dispute:

Union Street Freight House No. 2, House No. 3, and House No. 4.

Those Freight houses are operated by separate and distinct companies.

House No. 2 handles freight exclusively for Acme Freight Forwarding Co.

House No. 3 handles freight exclusively for International Freight Co.

House No. 4 handles freight exclusively for Gamble Skogmo Co., Twin City Shippers Association, Anaconda Co., Import Freight and Milwaukee Road LCL Freight.

The location of the facilities is approximately as shown on the attached diagram.

Each of the houses listed, for purpose of bulletin and assignment of positions, have for years been considered as separate and distinct locations.

For years bulletins issued by the Carrier have shown and do show the specific position advertised for bid and the specific House in which the position exists, Employees' Exhibits "A", "B", "C", and "D" attached. The employees assigned to those positions are required to perform the duties of the position to which assigned.

Union Street Freight House No. 2 operates on a seven (7) day per week basis. House No. 3 operates on a six (6) day per week basis and House No. 4 operates on a five (5) day per week basis.

On Tuesday, February 5, 1952, additional help was needed at the five (5) day operation House No. 4. The Carrier took twelve (12) employees regularly assigned to and working in House No. 3 and transferred those employees to House No. 4, thereby providing the additional help needed at House No. 4.

At the same time, there were employees assigned to House No. 2 (a House with a 7-day operation) who had rest days of Tuesday and Wednesday and who were therefore available for work on Tuesday, February 5, 1952.

The employees contend that such action by the Carrier was in violation of Rule 9-Bulletined Positions, Rule 12-Reducing Forces, Rule 27 40 Hour Week and Rule 32-Overtime.

POSITION OF EMPLOYEES: There is an agreement between the parties bearing effective date of September 1, 1949 which contains the following rules:

Rule 9-Bulletined Positions:

"(b) Bulletins will be numbered consecutively beginning with the first bulletin issued in January of each year and will show location, title, and brief list of the principal duties sufficient to identify the position, rate of pay, assigned hours of service, assigned meal period (except paragraph (b) Rule 31), assigned days of rest, and if temporary, probable or expected duration. Bulletins cover-

which he returned to House 3 from which place he ended his assignment at 4:00 P. M. In the meantime he had returned to House 3 locker room for his lunch during the lunch period. What we have said concerning employe Quinlivan applies similarly to the 11 other employes listed in the same group.

For the convenience of the employes as they must have a regular point at which to report for work, and for efficiency in operation, it is intended to have employes work as regularly as possible at a specific house but this is always dependent upon the fluctuation in tonnage as between the different houses. Employes themselves, through exercise of seniority, change from one house to another. It was only shortly before this occurrence on February 5th, 1952 that employe Quinlivan, occupying a position of check clerk in House 2, exercised his seniority to a check clerk's position in House 3.

Claimant employe A. Poulos was also assigned as a check clerk at Union Street, Chicago, Illinois at this time. The place at which he then began and ended his assignment was House 2. Tuesday, February 5th, 1952 was one of his assigned rest days. What we have said concerning employe Poulos applies similarly to the 11 other employes listed in the same group.

As we have said above, a sustaining award from your Honorable Board upon the claim which the employes have presented in this case can only mean that the Carrier would be required to allow some employes to remain idle in one house while at the same time paying overtime to employes on their rest day to perform the same kind of work in the same seniority district at the same location and we earnestly submit this is not a requirement of the schedule rules.

In this regard attention is directed to Rule 2 (f) from which it will be seen that all the positions involved were included in one seniority district, namely Seniority District 31. Attention is also directed to Rules 14 (a) and 26. The latter rule specifies that 8 consecutive hours, exclusive of the meal period, shall constitute a day's work and the former rule provides that the employe's assignment will begin and end at the same place. There is no requirement, as the employes attempt to argue, that an employe's assignment not only will begin and end at the same place but **remain at the same place throughout the 8 hour period.**

There has been no violation of the schedule rules as alleged by the employes but to the contrary, the circumstances on February 5th, 1952 were in conformity with the practice which has prevailed throughout the years under the schedule rules and we earnestly request that the claim be denied.

All data contained herein has been furnished to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintains freight-house facilities at Union Street in Chicago, Illinois, which occupy an area one block wide and five blocks long. Freight houses are maintained on each block which are designated as Houses 8, 1, 2, 3, and 4. Houses 2, 3, and 4 are involved in this dispute. Each of the latter three houses are operated primarily to serve individual shippers as follows: House No. 2 handles freight primarily for the Acme Freight Forwarding Company; House No. 3 that of the International Freight Company; and House No. 4 that of the Gamble Skogmo Company, Twin City Shippers Association, Anaconda Company, Import Freight, and its own LCL freight. The first shift at House No. 2 operates on a 7-day basis and the second and third shifts on a 6-day basis. House No. 3 operates on a 6-day basis and House No. 4 operates on a 5-day basis. As a result, House No. 2 has rest days assigned on each day of the week; at House No. 3 about 60% of the employes are assigned Saturday and Sunday rest days and about 40% are assigned Sunday and Monday as rest days; and at House No. 4 all employes are assigned Saturday and Sunday as rest days. On February 5, 1952, Carrier used the Claimants designated in part (2) of the claim, who regularly worked in House No. 3, to work in House No. 4. They re-

ported on and off duty at House No. 3 and were paid at their respective rates of pay. They worked their regularly assigned hours, no overtime being involved. On the same day there were employees in House No. 2 who had Tuesday, February 5, 1952, assigned as one of their rest days. They are the claimants designated in part (3) of the claim and they contend they should have been called on their rest days to do the work on a time-and-one-half basis. Claimants listed in part (2) of the claim assert they were improperly used at House No. 4 and demand an additional 8 hours pay for such use. Claimants listed in part (3) of the claim demand that they be paid an additional 8 hours pay at the punitive rate because of the rest-day work they lost.

The Organization bases its claim primarily on an alleged violation of Rule 9 (b), current agreement, which provides:

"Bulletins will be numbered consecutively beginning with the first bulletin issued in January of each year and will show location, title, and brief list of the principal duties sufficient to identify the position, rate of pay, assigned hours of service, assigned meal period, (except paragraph (b) Rule 31), assigned days of rest, and if temporary, probable or expected duration, * * *"

The dispute hinges on the meaning to be given to the word "location" as it is used in the foregoing rule. The docket in the confronting case is unnecessarily long and repetitious, and necessitates a resort to the conclusions to be drawn therefrom rather than a recitation of the evidence and arguments presented therein.

We think the word "location" as used in the foregoing rule must be defined in the light of all the facts and circumstances in each particular case. There are cases where it might mean the whole of a seniority district while in other cases it might be restricted to a particular office, building, or yard. The craft involved and the nature of the work to be performed must be considered in determining what the rule makers meant when they used the term. The particular physical situation and the practicabilities involved in getting the work done likewise enter into the meaning to be given to it. The extent to which the term was intended to limit the prerogatives of management necessarily must be taken into consideration.

We are of the opinion that the freight-handling operation at Union Street was one operation handled at more than one freight house for the convenience of shippers and the necessities of the situation resulting from the public streets that had to be kept open for public use. The bulletining of positions at the various freight houses was for the purpose of identifying them in order that employees bidding could act intelligently, and was not for the purpose of fencing in the work of each position. The specification of the particular freight house in the bulletin was nothing more than a designation of the employee's headquarters at which he went on and off duty. The freight houses were in the same seniority district and all the employees involved were carried on the same seniority roster. They performed the same work in each freight house. All the employees in all the freight houses operated under the same supervisory officer. The work in each freight house fluctuated in accordance with the operations of shippers in a manner that could not be controlled or anticipated by the Carrier. Employees were assigned to work in the various freight houses in sufficient numbers to perform the work ordinarily performed in each. There is nothing in the agreement to indicate that the employees of each freight house were restricted to the freight house where their headquarters was designated. It is most common for employees to work away from their headquarters point. Claimants were not deprived of the privileges they gained by the exercise of their seniority, including the choice of their headquarters point, the shift to be worked, rest days assigned, rates of pay, etc. They worked their assigned hours on regularly assigned days at their regularly assigned pay. They are in no way injured by their use in freight houses in close proximity. The agreement does not have the effect of making the employees assigned a headquarters at a particular freight house a separate class of employees. There was no extra work performed. Claimants designated in part (2) of the claim performed

work of their positions at the location assigned, to-wit, the Union Street freight station.

It appears from the record that it would be very impractical to construe the word "location" under the circumstances here shown in the manner the Organization would have us do. With the fluctuations of freight traffic which are beyond the control of the Carrier, it would result in idle men in one freight house at times when there was much work to be done in another freight house at the same location. No such result was intended by the rules and this Board is not authorized to write such an intent into them in the form of an interpretation of the agreement. If any change is to be made it must be by negotiation. We do not intend to convey the impression that a want of practical operation of a rule will warrant this Board in not enforcing it where the rule is clear. Such rules are to be enforced as made. Practical application may be considered along with all other circumstances in determining what the parties had in mind when they wrote the rule, when the rule is ambiguous and not plain. It is evidentiary under such circumstances, but not necessarily a controlling factor.

The record establishes, also, that employes in the various freight houses at Union Street have been used at freight houses other than the one designated as their headquarters point for many, many years without complaint. It is fundamental that a practice once established remains such unless it is specifically abrogated by the contract of the parties. The practice is likewise strong evidence of what the parties meant when the agreement was written. The long practice without complaint with reference to the application of an ambiguous rule is strong evidence of the mutual intent of the parties as to its meaning.

We necessarily conclude, after a consideration of the rules and the evidence, that the word "location" in the instant case means the whole freight-house operation at Union Street and not the particular freight house which may have been designated as the employe's headquarters point. This being true, the Claimants designated in part (2) of the claim were not engaged in extra work when they were used in House No. 4, but were in fact performing work of their own assigned positions. The Claimants listed in part (3) of the claim likewise have no cause for complaint since any violation as to them is necessarily grounded on a finding that the Claimants in part (2) were improperly used. A denial award is required.

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 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 10th day of November, 1955.