

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

THE NEW ORLEANS TERMINAL COMPANY

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

(a) The Carrier violated the Agreement when, on Thursday, April 19, 1951, it required Clerks E. W. Gautreau and A. F. Silbernagel to trade positions.

(b) The Carrier violated the Agreement when, on March 24 and 31, and April 7, 14, 21 and 28, 1951, as well as subsequent days, it used Depotmaster L. P. Youngblood to perform service regularly assigned to and performed by Claimants, such service being performed by Depotmaster Youngblood on unassigned days (rest days) of Claimants Gautreau and Silbernagel.

(c) As a penalty for the violation in Claim (a), the Carrier shall be required to additionally compensate Claimants Gautreau and Silbernagel at their respective pro rata daily rates of pay (12.52 and \$13.11, respectively) for each day, beginning with April 19, 1951, the date they were required to trade positions each with the other, that Claimants Gautreau and Silbernagel have not been permitted to work their regularly assigned positions, but each has been required to work the position regularly assigned to the other, and

(d) The Carrier shall be required to additionally compensate Claimants Gautreau and Silbernagel at proper rate of time and one-half for each unassigned day (rest day) Depotmaster Youngblood has performed work regularly assigned to Claimants' positions on March 24, 1951, and subsequent dates.

EMPLOYES' STATEMENT OF FACTS: Claimants are employees of the Carrier at New Orleans, Louisiana. Their positions are fully covered by the Agreement between the Parties.

Claimant Gautreau is regularly assigned to position of Loading Clerk, rate \$12.52 per day. A copy of Vacancy Bulletin describing this position is attached hereto and identified as Employees' Exhibit "A". As will be shown hereinafter, Claimant Gautreau and his predecessors were by bulletin, practice

days or holidays by other employees (either non-schedule or schedule supervisory employees or schedule employees of the same or a higher classification in the same group) who are already on duty in the department and can perform the service. The days here involved were assigned rest days of all clerks employed in the checking and handling of freight at New Orleans.

Carrier did **not** violate the agreement in using the Depotmaster to perform the work required of him on the unassigned Saturdays involved. Parts (a) and (c) of claim should be dismissed for want of jurisdiction and parts (b) and (d) should be denied, and Carrier respectfully requests that the Board so hold.

All pertinent facts here involved have been made known to employee representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The Carrier maintains a freight station at New Orleans, Louisiana, with freight sheds A, B, C, D and F. This dispute involves the assignment of the clerical staff at the several sheds within this seniority unit. Those directly concerned with this issue are Depotmaster Youngblood (not a claimant), Inbound Warehouse Foreman Silbernagel, one of the Claimants, certain Loading Clerks, including Claimant Gautreau, a Utility Clerk, a Delivery Clerk and freight handling forces. All of these employees are regularly assigned to work from Monday through Friday with Saturday and Sunday as rest days. None of these is regularly assigned to work on Saturday and Sunday.

On certain Saturdays it was necessary to perform work of unloading, checking and delivering inbound freight in Sheds A, C and D, requiring the services of two or three clerks and a number of freight handlers. On Saturdays, March 24, 31 and April 7, 1951 three clerks and the necessary number of freight handlers were used in unloading and checking inbound merchandise in these sheds. On Saturdays April 14, 21, and 28, 1951, two clerks were used in Sheds A, B, C, and D. On each of these Saturdays Depotmaster Youngblood was in charge of the operation, performing the necessary supervisory work and checking freight from inbound cars.

The Organization contends that the Carrier violated the Agreement when it used Depotmaster Youngblood on the dates in question, and in permitting him, in addition to the performance of other duties, to check freight. This is said to have been a violation of the unassigned day rule of the 40-Hour Week Agreement. Rule 10 provides that,

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, either an available extra or unassigned employee who would otherwise not have forty (40) hours of work that week or the regular employee may be used; unless such work is performed by an available extra or unassigned employee who would otherwise not have forty (40) hours of work that week, the regular employee shall be used. Where work is required to be performed on a holiday which is not a part of any assignment the regular employee shall be used. Wherever the words 'the regular employee' are used in this paragraph they shall mean the regular employee entitled to the work under this agreement."

Since there were no available extra employees, Claimants insist that Rule 10 requires the use of the "regular employees". And they claim that they were the regular employees, normally assigned to perform the work actually performed by Depotmaster Youngblood on the dates in question. The record shows that Claimant Gautreau was used on the following Saturdays: March 24, March 31, and April 7. And Claimant Silbernagel worked on Saturday, March 17, 1951. On this the claim has been adjusted accordingly.

As we have observed in Award 7166, involving a somewhat comparable situation, "The freight-handling operation . . . was one operation handled at more than one freight house for the convenience of shippers . . . The bulletining of positions at the various freight houses was for the purpose of identifying them in order that employes bidding could act intelligently, and was not for the purpose of fencing in work for each position. The specification of the particular freight house in the bulletin was nothing more than a designation of the employe's headquarters at which he went on and off duty. The freight houses were in the same seniority district and all the employes involved were carried on the same seniority roster . . . All the employes in all the freight houses operated under the same supervisory officer. The work in each freight house fluctuates in accordance with the operations of shippers in a manner that could not be controlled or anticipated by the Carrier. Employes were assigned to work in various freight houses in sufficient numbers to perform the work . . . There is nothing in the agreement to indicate that the employes of each freight house were restricted to the freight house where their headquarters were designated . . ."

With respect to Claims (b) and (d), we note that Depotmaster Youngblood has supervision over the clerks and freight handlers in the Carrier's several freight houses. It has also been observed, without contradiction, that in addition to his supervisory functions, it is not uncommon for Depotmaster Youngblood to check freight in or out. Nothing has been called to our attention in this agreement which strictly limits the Depotmaster's functions to those of the supervisor. On the Saturdays in question Youngblood's presence was proper because of his performance of the usual supervision. If some of his time was devoted to doing clerical work or lower level supervision, such was in keeping with practice.

Since no extra employes were available all of the work in question was performed by "regular employes". There may have been some variation in the amount of the several duties performed by Depotmaster Youngblood, but we have no clear-cut evidence that there was a violation of Rule 10, and thus no proper basis for sustaining this claim. Claims (b) and (d) must be denied.

However, the fact that the Carrier transferred Gautreau to Shed D, on April 19, 1951, where it is claimed (and not denied) that he performed the work normally performed by Silbernagel, while at the same time Silbernagel was transferred to Shed A to perform work normally performed by Gautreau, has given rise to a further claim. According to the record (Bulletin No. 646), Silbernagel's job paid \$13.11 per day and required of him, in addition to routine clerical duties, "General Supervision of inbound warehouse". The position held by Gautreau required of him only clerical duties, with no supervision, and paid only \$12.50 per day (Bulletin No. 624). From the record it seems clear that this change of positions occurred only from April 19, 1951, until August 17, 1951. Thus the claim set forth in (a) and (c) of Statement of Claim is limited to this brief period.

This claim is for penalty pay for the period in question. Our attention is called to Rule 4 (k) which states that,

"Trading positions or seniority standing will not be permitted."

Since the two positions are different, both as to pay and as to duties and responsibilities; and since there has been no denial of the facts as to this exchange of positions at the Carrier's command, we must conclude that Rule 4 (k) and Rule 21 of the parties' Agreement are involved. The latter provides, in part, as follows:

"(a) Employes temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced . . ."

Thus, as we interpret the language of the parties' Agreement, both Claimants, Gautreau and Silbernagel, should receive the higher rate of pay for the period in question.

Since the parties have provided for situations where, at the discretion of the Management, employes may be called upon to do the work of other employes, we see no reason why we should impose a different penalty from that specified in the contract. Our award must sustain the claim only to the extent of pay for both Claimants at the rate of \$13.11 per day for the period in question. We assume that Silbernagel, whose regular rate was \$13.11 per day, continued to receive that rate while he was on transfer. If so, he has been paid in accordance with the Agreement. If Gautreau was transferred to the position of Silbernagel, he, too, should be paid the rate of \$13.11 for the period in question. But we see no basis for sustaining any further claim.

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 violated.

AWARD

Claims (a) and (c) sustained to the extent set forth in the Opinion and Findings. Claims (b) and (d) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.