

Award No. 7314
Docket No. CL-7303

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**

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

1. The Agreement governing hours of service, rates of pay and working conditions effective March 1, 1947, subsequently revised to include 40-Hour Week September 1, 1949, was violated by the Carrier at Cincinnati, Ohio, beginning with April 20, 1953, and subsequent thereto, when it started claimants' shifts between the hours of 12:00 Midnight and 5:00 A.M. without agreement between the Management and the duly accredited representatives as required by the provisions of Rule 8(c), and

2. Rule 9(e) (present Rule 10(e)), was violated when Carrier allowed and/or permitted claimants to perform service between 5:00 A.M. and 6:30 A.M., as 6:30 A.M. was the earliest usual starting time for the regularly assigned platform tallymen and truckers, and

3. That proper claimants, to be determined by check of the Carrier's records, shall be paid at the rate of time and one-half the rate paid them for all service performed between the hours of 12:00 Midnight and 6:30 A.M. from April 20, 1953 to May 5, 1953, inclusive, and subsequent dates thereto until the violation has been corrected.

EMPLOYEES' STATEMENT OF FACTS: On May 26, 1953, a meeting was held in the office of J. H. McMahon, Freight Agent, Brighton Station, Cincinnati, Ohio, in order to determine the number of extra platform employees started between 12:00 Midnight and 5:00 A.M. for a period of time beginning with April 20, 1953, at Brighton Station, Cincinnati, Ohio. This meeting was attended by Agent J. H. McMahon and Supervisor Personnel C. J. Schuler, representing the Management, and Division Chairman G. F. Denmark and General Chairman E. J. Hoffman, representing the Employees.

The following was agreed to as factual information:

The regularly assigned positions established as of April 1, 1953 under Rule 9(b) of the Agreement effective March 1, 1947, based

"The facts in this case were fully set forth in my letter of July 9, 1951, in which I declined this claim. Under date of August 30, 1951, former General Chairman Machin wrote me stating that he could not accept my decision and that he wished to discuss the case further at conference scheduled to begin on October 2, 1951. However, the case was not discussed at that conference nor at any subsequent conference until you wrote me on December 1, 1953, advising that you were doing so in order that I would not conclude that the case had been abandoned. You then listed the case for discussion at the conference on January 8, 1954, at which time you stated that you were bringing it up for record purposes only. The case was not discussed on its merits and I advised you at that conference that the passage of more than two years between August 1951 and December 1953 without any action on your part certainly constituted abandonment in fact.

"At our conference on March 16 you stated that you contemplated appealing my decision in a somewhat similar case at Cincinnati, my case No. 374 and your file R-644, to the Adjustment Board, and asked if I would be willing to let the decision in the Cincinnati case control the disposition of the instant case.

"This will confirm my advice, given to you at the conference on January 8, that I consider the instant case as having been abandoned for failure on your part to further handle and that being the case I could not, of course, agree to any such proposal as you made at our last conference."

The Carrier asserts that the Employees are here attempting to reopen an issue by indirection which had been abandoned on the property by the Clerks' Organization in a similar dispute. The Carrier submits that abandonment is in fact an acceptance of the Carrier's decision in the East St. Louis claim.

In view of all that is contained hereinabove the Carrier submits this claim is entirely without merit and respectfully requests this Division to deny it accordingly.

(Exhibits not reproduced.)

OPINION OF BOARD: The controversy in this case deals with the interpretation of Rules 8 and 9 (old agreement) and subdivisions of these rules as applied to the factual situation here presented.

The case comes to us on a Joint Submission and the controlling facts are not in dispute. It deals with platform positions and starting time thereof.

Rule 8 provides:

"(a) Regular assignments shall begin and end at designated points and shall have a fixed starting time which shall not be changed without at least thirty-six (36) hours' notice to the employees affected.

"(b) In no event, shall the regular starting time of any assignment be between the hours of 12:00 midnight and 5:00 A. M.

"(c) Exceptions to this rule may be made by mutual agreement between the parties signatory hereto."

Petitioner contends in support of its position on these claims that Rule 8(b) applies to "any assignment." We are not in agreement with this contention as in our opinion the same must be read in conjunction with the subject matter under consideration which in this situation must be related

back to Rule 8(a) and relates to "Regular assignments" and not to extra platform employes.

Carrier states its position to be that there is no restriction in any rule which prevents it from starting extra employes at any time during the 24 hour period and that Rule 8 applies only to regular assignments. We are in agreement with Carrier's contention on this point.

The other question involved deals with an interpretation of Rule 9, "Freight Station Platform Forces" and relates to additional forces.

We find no violation of this rule on this record.

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 rules were not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1956.