

Award No. 8284

Docket No. CL-7837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 4-A-1 (1) when it assigned W. H. Van Horn, Chauffeur, regularly assigned to the Motor Pool, West Philadelphia Garage, Philadelphia, Pennsylvania, Philadelphia Terminal Division, to perform extra or unassigned service as Chauffeur on Saturday, November 8, 1952.

(b) The Claimant, Peter Ottaviano, who is also regularly assigned to the Motor Pool should be allowed eight hours' pay, at the punitive rate, for Saturday, November 8, 1952, on account of this violation. (Docket E-868)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (c), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Mr. Peter Ottaviano, the Claimant in this case, is regularly assigned to the Motor Pool, West Philadelphia Garage, Philadelphia, Pennsylvania, Philadelphia Terminal Division, as Chauffeur. His tour of duty is 12:00 Midnight to 8:00 A. M., Monday through Friday, rest days Saturday and Sunday. His seniority date on the Philadelphia Terminal Division in Group 2 is October 1, 1936. He is senior to W. H. Van Horn.

to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the Claimant was not entitled under the Agreement to be used for the work in question and that he is not entitled to the compensation which he claims.

It is respectfully submitted, therefore, that the claim in the instant case should be denied.

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: The Carrier maintains a so-called Motor Pool of Chauffeurs at West Philadelphia garage. Both Claimant and Van Horn, the junior man who did the work complained of are members of this pool and both men were qualified under the bulletined position duties assigned to the pool in which the individual work assignments are made by the Truck Master. Claimant had been assigned under this system to operate one of the trucks at the Pennsylvania Produce Terminal on the 12:00 Midnight to 8:00 A. M. shift daily.

On Saturday, November 8, 1952, an emergency arose when it became necessary for the Carrier to have some multiple unit car trucks brought from Wilmington, Delaware to the Paoli shops in Philadelphia and Carrier called Van Horn to do the job, because "it was the kind of work normally performed by him."

The Organization contends that because the assignments in the Motor Pool were interchangeable, and that since both men were "regularly qualified" under the bulletined positions and the "regular employee" was not identifiable under rule 4-A-1 (i) that the work must go to the senior available employee—viz., claimant.

Rule 4-A-1 (i) is as follows:

"* * * Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

In a recent case involving a claim in a similar Motor Pool (Award 8006) we denied the claim because Claimant "was not available at the time the Schenectady assignment arose" and said "* * * Under these circumstances, there was no violation of any seniority rights to which, otherwise, the Claimant may have been entitled." (Emphasis supplied) We emphasize the word "may" to show that the award is not authority for the proposition that other things being equal seniority is mandatory.

The Organization has abandoned its claim as presented to us, based on an alleged violation of Rule 4-A-1 (i) supra, and is now relying on Claimant's seniority alone, but we dispose of the claim as it appears on the docket, where the said rule is made the issue. We of course acknowledge the recognition given to the rule of seniority in the industry, yet there have been made numerous modifications of the rule in the various agreements with the Carriers.

During the oral argument on this and the two companion dockets your referee asked the Organization's representative to pin point the particular

seniority rule in the agreement before us that was violated and he did not do so, but it is evident from the Organization's brief herein and the awards relied upon that the rule it is seeking to invoke is that referred to in Award 105 which is the "bellwether" of those awards.

The rule in Award 105 "Rule 5. (a) Promotion basis.—Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to excepted positions."

That reliance was placed on this is supported by the argument of the Board Member arguing the case for the Organization when he dwelt at length on that Award's (105) interpretation of the word "promotion" which interpretation was specifically rejected in Award 6546.

Also it is to be noted in Award 105 "that this claim shall not be regarded as a precedent in cases to be decided in the future where other circumstances might become more controlling."

In the instant case other circumstances do become more controlling, as is well pointed out in Award 8026, a sustaining award relied upon here by the Organization wherein it is said, "Inescapable, however, is Rule 34 (i):" Rule 34 (i) mentioned is the same rule as 4-A-1 (i) in our case.

This means—obviously—as that Award (8026) points out, that this rule 4-A-1 (i) must be given effect, if it can be done without doing violence to the language.

That the Carrier did this in the instant case is not open to serious doubt. We think a reasonable construction of the language "the regular employee" is broad enough to cover a man who normally and regularly does the work required as one of the duties of his position. Certainly Van Horn was more "identifiable" as "the regular employee" than Claimant. Therefore, even assuming a seniority rule as Organization is contending for was in the agreement, respect must be given to Rule 4-A-1 (i), which is the rule the Organization claims was violated in the instant case.

Our conclusion is that the Carrier did not violate the agreement, and the claim should be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1958.