

Award No. 8285
Docket No. CL-7850

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 (i), when an employe junior to the Claimant was used to perform extra or unassigned service as a Watchman at Piers 46 and 48, South Wharves, Philadelphia, Pennsylvania, Philadelphia Terminal Division, Saturday, May 26 and Sunday May 27, 1951.

(b) The Claimant, C. G. Ambrose, should be allowed eight hours pay a day, at the punitive rate, for May 26 and 27, 1951, as a penalty for this violation. (Docket E-866)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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 Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), 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. C. G. Ambrose, the Claimant in this case, is a regularly assigned Group 2 employe at Federal Street Freight Station, Philadelphia, Pennsylvania, Philadelphia Terminal Division, and has a seniority date of October 4, 1940 on the seniority roster of the Philadelphia Terminal Division in Group 2.

Mr. C. Civinelli is also a regularly assigned Group 2 employe at Federal Street Freight Station. His seniority date is February 3, 1942. He is

The attention of your Honorable Board is also respectfully directed to Award No. 6756 (Referee Jay S. Parker), involving the parties to this dispute, wherein the following principle was enunciated:

"... we are convinced that Agreement was violated and hence are impelled to so hold. However, since Claimant performed no work his recovery, under well-established Awards (see Award No. 6730 and other decisions there cited), must be limited to a day's pay at the pro rata rate."

The Carrier submits that even assuming a violation of the applicable Agreement in the instant case, which the Carrier denies, the Claimant would not be entitled to the time and one-half rate, but only the pro rata rate of pay for the hours claimed on the dates in question.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board 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: This case is before us on an agreed statement of facts which recites in part the denial of the claim by the Superintendent as follows:

"Due to a series of fires at our Piers 46 and 48, several employees, including C. Civinelli, Stower, Federal Street, were assigned to the river end of Piers 48, 53, 55 and 56 on a confidential or special duty assignment for the weekend of May 26, 27, 1951. This was as a result of an emergency requirement and had no connection with the Watchman service provided by us at these Piers."

As has been noted the claim recites violation of the Rules of the Agreement, "* * * particularly Rule 4-A-1 (i), when an employee junior to the Claimant was used to perform extra or unassigned service as a Watchman at Piers 46 and 48, South Wharves, Philadelphia, Pennsylvania, * * *"

During the oral argument on the case both sides agreed that Rule 4-A-1 (i) was inapplicable. Thus the substance of the claim as it appears before us fails.

The Organization seeks however to save the claim on unidentified seniority rules, as was done in Award Number 8284 announced herewith, and described by the Organization as a "Companion Case." Consequently we feel that the same disposition is in order.

The Organization relies principally on Awards 5559 and 6158.

While Award 5559 involved this same carrier, the rule involved was the scope rule, not involved here because both claimant and Civinelli, the man who was called were under the agreement. However that may be, certainly the award is not controlling here where, admittedly, seniority is the sole remaining issue.

In Award 6158 the decision was based on a rule similar to Rule 4-A-1 (i) concededly not involved here.

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.