

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & 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 3-C-1 (c), when it changed the tour of duty of Frank Vallone, Tallyman, 37th Street Freight Station, New York, N. Y., former New York Division, more than one hour and failed to permit Mr. Vallone to exercise his seniority by displacing a junior employe on another position.

(b) The Claimant, Frank Vallone, should be allowed eight hours' pay a day, as a penalty, commencing June 16, 1955, and continuing until the violation is corrected and the Claimant is permitted to exercise his seniority and select a position of his choice. (Docket 21)

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, 1952, 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.

Prior to June 16, 1955, Frank Vallone, the Claimant in this case, was a regular Tallyman at 37th Street Freight Station, New York, N. Y., former New York Division. His tour of duty was 8:30 A. M. to 5:00 P. M., including a

The Carrier respectfully submits that Rule 3-C-1 (c) contains no penalty provision. Therefore, in accordance with the principles shown in the above-quoted Awards, any possible technical violation of the Rule in this case could only be properly adjusted by allowing the Claimant any monetary loss he may have sustained.

However, as indicated in the Carrier's Statement of Facts above, the Claimant suffered no monetary loss whatsoever, and the Employees have not, and cannot, show that any loss was sustained. For that reason alone the claim should be denied.

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 to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

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

Exhibits not reproduced.

OPINION OF BOARD: Prior to June 16, 1955 Claimant Vallone's scheduled tour of duty as Tallyman was 8:30 A. M. to 5:00 P. M., with a thirty minute lunch period, Monday through Friday. Effective June 16, 1955 his tour of duty was changed to 9:00 A. M. to 6:00 P. M., with a one hour lunch period. Claimant attempted to exercise his seniority to another position with the same hours as his position prior to the change, but was not permitted to do so. At a later time, however, he exercised his seniority on two other Tallyman

positions, both of which pay the same rate and have the same hours as his assigned position had prior to June 16, 1955.

The governing agreement provision is Rule 3-C-1 (c) which states in pertinent part: "An employe whose assignment is permanently changed one hour or more from the time shown on the last bulletin advertising his position . . . may within twenty-nine days after notification, if he so desires, exercise seniority."

By the time the subject claim had been appealed to this Board the Carrier had agreed that the change in the end of Claimant's tour of duty from 5:00 P. M. to 6:00 P. M. was a change of one hour or more from the time shown as Claimant's quitting time on the last bulletin advertising his position, and that Claimant should have been permitted to exercise seniority. Carrier states in its ex-parte submission to the Board: "The only issue, therefore, is whether or not claimant was entitled to any compensation other than monetary loss sustained by him because of the Carrier's refusal to permit him to exercise his seniority on June 16, 1955." Carrier asserts Claimant has not, in fact, suffered any monetary loss and that no additional compensation properly may be awarded him.

Since Carrier refused to permit Claimant to exercise his seniority after changing his assignment by one hour, Claimant in effect retained the same scheduled hours as before. Carrier may not properly contend the Claimant's assigned hours were validly changed while refusing him his contract right to exercise seniority in a different position. It follows that by requiring Claimant to work from 5:00 P. M. to 6:00 P. M., the Carrier worked him one hour on overtime during each day that Claimant was held in the position against his stated desire. Claimant therefore is entitled to be compensated in the amount of one hour's pay at time and one-half rate for each such day worked.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated the Agreement.

AWARD

Claim sustained to the extent indicated in the above Opinion of Board and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 6th day of October, 1961.