

Award No. 10924
Docket No. CL-10670

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION**

STATEMENT OF CLAIM:

CLAIM NO. 1

Claim of the System Committee of the Brotherhood that the Carrier violated the current Clerks' Agreement when on June 7th, 20th and 26, 1957 it reduced the number of regularly assigned "gangs" on Wilkes Barre Transfer from three to two, and that

(a) Checker W. P. Hines; Truckers W. Rowlands, C. P. Koulik and L. L. Smith shall each be allowed a day's pay at pro rata rate for the violation of June 7, 1957, and that

(b) Checker W. J. Stephens; Truckers W. Rowlands, C. P. Koulik and J. J. Papsum shall each be allowed a day's pay at pro rata rate for the violation on June 20, 1957, and that

(c) Checker W. P. Hine; Truckers W. Rowland, C. P. Koulik and J. J. Papsum shall each be allowed a day's pay at pro rata rate for the violation of June 26, 1957, and that

(d) The number of regularly assigned gangs at Wilkes Barre Transfer shall not be reduced by virtue of this violation.

CLAIM NO. 2

Claim of the System Committee of the Brotherhood that the Carrier violated the current Clerks' Agreement when on July 10th and 24th and August 1st, 1957, it reduced the regularly assigned "gangs" on Wilkes Barre Transfer from three to two, and that

(a) Checker R. S. Trevenhan; Truckers L. L. Smith, D. A. Daney and J. A. Mariski shall each be allowed a day's pay at pro rata rate for the violation on July 10, 1957, and that

(b) Checker R. S. Trevenhan; Truckers L. L. Smith, D. A. Daney and J. A. Mariski shall each be allowed a day's pay at pro rata rate for the violation on July 24, 1957, and that

(c) Checker C. P. Koulik; Truckers R. S. Trevenhan, L. L. Smith and J. A. Mariski shall each be allowed a day's pay at pro rata rate for the violation on August 1, 1957, and that

(d) The number of regularly assigned gangs at Wilkes Barre Transfer shall not be reduced by virtue of this violation.

CLAIM NO. 3

Claim of the System Committee of the Brotherhood that the Carrier violated the current Clerks' Agreement when on and since June 7, 1957 it reduced the number of regularly assigned "gangs" on Wilkes Barre Transfer from three to two, and that

(a) Checker William J. Stephens and Truckers Harry Williams, William P. Hine and Lawrence L. Smith shall each be allowed a day's pay at pro rata rate for the violation on September 11, 1957, and that

(b) All other employes adversely affected by virtue of this violation shall be allowed a day's pay at pro rata rate on all subsequent dates until said violation is corrected.

CLAIM NO. 1

EMPLOYEES' STATEMENT OF FACTS: Under date of June 3, 1957 the Agent at Wilkes Barre Transfer posted the following notice:

"Notice

Due to the fluctuation of tonnage handled at this transfer operation — effective June 6, 1957 the present number of three (3) regularly assigned gangs for the quarter ending June 30, 1957 will be reduced from three (3) to (2) gangs under regularly assigned positions."

On the date set forth in the notice, June 6, 1957, the Carrier not only did not reduce force but worked four (4) gangs or one more than the regularly assigned number of gangs. On June 7, 1957 the Carrier did reduce force so that only two gangs were worked but on that date left 76,348 tons unhandled to the end that on the next two following working days it was necessary to work six gangs to handle the work. The two gangs which did work on June 7, 1957 handled a total of 104,081 tons. Figures quoted above should read pounds instead of tons. Our figures for June 7, 1957 include cars placed 3 P. M. and are actually lower by approximately 17,000 pounds than they should be.

The number of gangs worked on each working day during the month of June 1957 was as follows:

Date	No. Gangs Worked	Date	No. Gangs Worked
6-3-57	5 Gangs	6-17-57	6 Gangs
6-4-57	4 "	6-18-57	7 "
6-5-57	4 "	6-19-57	4 "
6-6-57	4 "	6-20-57	2 "
6-7-57	2 "	6-21-57	5 "

2. The rule provides no formula for determining when or under what conditions such forces should be reduced or increased — such matters are left to the judgment of the carrier.

The claim of the employees in this case is not supported by any rule of the agreement, and is an attempt by the employees to obtain by an award from your board that which they have failed to obtain in the agreement. Inasmuch as the Board has correctly held that it has no authority to substitute its judgment for that of the Carrier, or to add terms to the Agreement negotiated by the parties, a denial award is in order and is respectfully requested.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

OPINION OF BOARD: Three Claims are presented by the Petitioner arising out of the action of the Carrier in reducing the number of regularly assigned "gangs" at Wilkes-Barre, Pennsylvania, Freight Transfer from three to two on June 7, June 20, June 26, July 24, August 1 and September 11, 1957 and for all subsequent dates upon which an alleged violation of the Rules has occurred until such violation is corrected. It is contended by the Petitioner that on June 3, 1957, the Agent at Wilkes Barre posted a notice effective June 6 that the number of three regular assigned gangs for the quarter ending June 30, 1957 would be reduced from three to two; that, in fact, four gangs were worked on June 6 but on June 7 the number of gangs was reduced by the Agent in violation of Rules 26 and 28 of the Agreement effective April 16, 1951.

Following are the Rules:

"RULE 26. Except as provided in Rule 27, nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employees covered by this agreement below five (5) days per week, except that this number may be reduced in a week in which holidays occur by the number of such holidays.

* * * * *

"RULE 28. At freight stations, transfer platforms, or other places where fluctuations of tonnage govern employment according to service requirements, the minimum number of eight (8) hour platform positions worked any day of the last month of the quarter will be considered as establishing the number of regularly assigned positions for the succeeding quarter, except, however, **that this number may be reduced, if necessity should arise**, by posting notice of the positions not required, the remaining number of positions to be known as the regular established platform force. (Emphasis ours.)

It is the contention of the Petitioner that on June 7, 1957, when the number of gangs was reduced by the Carrier from three to two, there was enough work at hand to warrant the using of three gangs but that the Agent reduced the number of gangs, arbitrarily, to circumvent the Rules so that the number of two gangs could be used as a basis for a minimum for the succeeding quarter; that the daily average of the number of gangs used throughout all the period covered by these three claims was well in excess of the figure of three which had been used as a minimum prior to the time on June 7 when the Agent had reduced the number of gangs to two; that, consequently, the "necessity" did not arise justifying the reduction of the posted number of

minimum gangs from three to two and that action on the part of the Carrier constituted a violation of the Guaranty Rule 26.

Carrier maintains that Rule 28 of the Agreement is controlling in this dispute and that the meaning of this Rule must be gathered from the language used in it. Carrier avers that this Rule has been properly complied with by the Carrier — that under the Rule the minimum number of platform gangs had been properly established at three and this was adhered to during April and May 1957; however, it became apparent to the Carrier at that time that a reduction in the minimum number of regular gangs was required if operation of the transfer was to be carried on efficiently and economically; that, in its best judgment, under the circumstances, a necessity had arisen which required that the minimum number of gangs be reduced from three to two and, consequently, this action was taken.

The Petitioners argument is founded largely on an attempt to show that on June 7, the first day upon which two regular gangs were worked, there was sufficient work for three gangs leading to the conclusion that no necessity had arisen which would justify the reduction of the minimum number of regular gangs from three to two. The Carrier asserts quite emphatically that this is not in accordance with the true facts. In support of Petitioners position a statement by eight employes was submitted which was neither dated nor offered on the property so cannot be considered here. In any event, where there is a dispute as to what the facts are in a given controversy, this Board has held it is in no position to resolve what the real facts are.

It will be observed in an analysis of Rule 28 that the fluctuation of tonnage shall govern employment according to service requirements and further that the number of regular gangs may be reduced if the necessity should arise. There is no ambiguity in the language used. Carrier asserts its action was precipitated by declining tonnage at Wilkes-Barre. Petitioner has not contradicted Carrier's assertion that business was on a decline at the time the change was made in the regular number of gangs.

We cannot substitute our judgment for that of the Carrier's. One of the most basic and fundamental principles recognized by this Board is that the assignment of work is the prerogative of the Carrier unless such right has been limited by contract. See Awards 6856, 7307, 7362 and 7849 among others.

Rule 28 is controlling in the instant matter and there has been no violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.