

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 PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4984) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-B-1, 3-D-1(a), and 3-E-1, when L. T. Cahn, who has no Group 2 seniority on the Pittsburgh Region, was permitted to represent a position on the Group 2 Extra List, 11th Street Freight Station, Pittsburgh, Pa., effective September 1, 1959.

(b) J. N. Yadrick be allowed a day's pay in addition to wages earned, beginning September 1, 1959, and for all subsequent dates L. T. Cahn performs service in Group 2 until the violation is corrected, with interest at the rate of $\frac{1}{2}$ of 1 per cent a month.

EMPLOYES' 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 (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.

On July 24, 1959, the Superintendent of Personnel for the Northern Region of the Pennsylvania Railroad Company wrote the General Chairman as follows:

The applicable Agreement in the instant case is that of May 1, 1942, except as amended, and it cannot properly be revised or expanded in the manner contemplated in the claim by the unilateral action of one of the parties or by an award of your Honorable Board. The Organization should not be permitted to accomplish something through an award of this Division, which may only properly be accomplished through the process of collective bargaining.

The Carrier respectfully submits for the foregoing reasons, the claim of the Organization is wholly lacking in merit under the terms of the Agreement and 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 interpretations 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 Agreements between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. 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.

(Exhibits not reproduced.)

OPINION OF BOARD: L. T. Cahn held the position of Assistant Foreman, a Group 1 position, at the Williamsport Freight Station, where he held seniority in both Groups 1 and 2. He transferred with his position from the Williamsport Freight Station in the Northern Region to Eleventh Street Freight Station, Pittsburgh, in the Pittsburgh Region under the provisions of Rule 3-E-1 effective August 17, 1959. Effective August 28, 1959, the position of Assistant Foreman held by Cahn was abolished at Pittsburgh, Eleventh Street Station. From August 29 to September 12, 1959, at the location involved, he was used to represent an extra Group 2 position of Operator-Loader-Trucker. He bid for and was awarded position of Tallyman, a Group 1 position, Symbol No. F-732, at the same station effective September 14, 1959. On September 15, 1959, he was displaced from his position as Tallyman. Thereafter, he worked as an extra Group 2 employee at the same station until he obtained a regular Group 2 position effective September 21, 1959.

It is the position of the Petitioner that L. T. Cahn exercised an option to follow his position to the Pittsburgh Region as a Group 1 employe which gave him the same seniority in Group 1 he had in the Northern Region under the Agreement; that his position as an Assistant Foreman was subsequently abolished; that he did not have seniority in Group 2 in the Pittsburgh Region, as he had in the Northern Region, to change to a Group 2 position as he did not "choose to follow such position" as provided for in Rule 3-E-1 of the Agreement.

Carrier to the contrary contends that in Rule 3-E-1 of the Agreement there is a provision which permits, without restriction, employes who elect to follow their positions from one seniority district to another to "carry their seniority with them" and that seniority necessarily includes seniority in both Group 1 and Group 2.

Rule 3-E-1 (a) of the agreement provides, as follows:

"RULE 3-E-1.

(a) Employes whose positions are transferred to another seniority district will, if they choose to follow such positions, carry their seniority with them and will retain and continue to accumulate seniority in their home seniority district. Employes not electing to follow their positions may exercise seniority in their home seniority district under Rule 3-C-1.

Employes transferring without their positions from one seniority district to another will rank in new seniority district from date of transfer, but will retain and continue to accumulate seniority in their home seniority district."

In interpreting Rule 3-E-1 (a) we must give consideration to Rule 3-B-1 which reads, as follows:

"RULE 3-B-1.

(a) Each Operating Division and except as otherwise agreed, each System General Office Department shall constitute a separate seniority district and separate seniority shall prevail in each such district, by groups, as such groups are defined in the Scope of this Agreement.

(b) On a Division where two or more separate seniority districts were in effect immediately prior to May 1, 1942, employes shown on the seniority rosters of such districts will hold prior rights therein, in their respective groups (as such groups are defined in the Scope of this Agreement), and will begin to accumulate seniority in all classifications of the same group and over the entire Division effective May 1, 1942.

(c) (Effective April 1, 1953) In the application of this Agreement, separate seniority districts have been established as shown in Appendix A and separate seniority shall prevail in each such district, by groups, as such groups are defined in the Scope of this Agreement."

Rule 3-D-1 (a), as follows:

"RULE 3-D-1.

(a) Separate seniority rosters of employees as defined in Groups 1 and 2, will be prepared for each seniority district. For employees covered by Group 1, roster will show rank number, name, and date of entry in the group. For employees covered by Group 2, roster will show rank number, name, occupation, and date of entry in the group. Rosters will be revised as of January 1st, and posted in January of each year in places accessible to the employees affected."

Award 12285 (Kane) involves an interpretation of provisions of this agreement but the precise question presented there is dissimilar to the question presented in this case. As in that award, we must also, here, consider all the rules of the agreement.

In Rule 3-B-1 (b) we note the following: "employees shown on the seniority rosters of such districts will hold prior rights therein, in their respective groups", and in

Rule 3-B-1 (a) — "Each Operating Division . . . shall constitute a separate seniority district, and separate seniority shall prevail in each such district, by groups, . . ." and, again in

Rule 3-D-1 (a) "Separate seniority rosters of employees as defined in Groups 1 and 2, will be prepared for each seniority district." (Emphasis ours.)

In Rule 3-E-1 (a) it is provided that employees whose positions are transferred to another seniority district will, if they elect to follow such positions, carry their seniority with them and will retain and continue to accumulate seniority in their home seniority district. It is further provided that employees transferring without their positions will rank in new seniority district from the date of transfer.

L. T. Cahn's position was transferred to a different seniority district and he followed his position. The seniority he had established in Group 1 in the Northern Region followed him to the Pittsburgh Region. The seniority he had established in Group 2 in the Northern Region did not follow him to the Pittsburgh Region. When Cahn's position as Assistant Foreman was abolished he had two alternatives, either to exercise his seniority in a Group 1 position on the Pittsburgh Region or return to the Northern Region and exercise his seniority there in either Group 1 or Group 2. Rule 3-E-1 (a) of the Agreement was violated when Cahn was permitted to represent a position in Group 2 in the Pittsburgh Region. Consideration of all the provisions of this Agreement leads us to this conclusion.

Coming now to the question of a penalty being allowed Petitioner for the alleged infraction of the rules of the agreement by Carrier, there is no provision for any penalty in the agreement nor do we have any right nor power to read any penalty provision into the agreement. If any loss had been shown, Petitioner would have been allowed compensatory damages. Under other circumstances, if there had been a wilfull and deliberate violation of the agreement this Board might have allowed nominal damages. There is nothing of this sort indicated in the record nor is there anything denoting Carrier benefited in any respect by the procedure followed in the instant case.

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 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

Though, technically, there has been a violation of the Agreement, there is nothing in this record which would justify an allowance of either compensatory or nominal damages.

AWARD

Claim (a) sustained to the extent indicated in Opinion and Findings.

Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October, 1964.