

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, 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-5190) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-2(a) and 4-A-8(a) of the Eleventh Street Freight Station, Pittsburgh Region, by abolishing two regularly assigned platform gangs, and three extra freight trucker positions, effective April 1, 1960.

(b) Certain named employees as well as any other employee adversely affected by the abolishment of these eleven positions be compensated the full wages of the position held or represented on April 1, 1960, and continuing until adjusted.

(c) Interest at the rate of $\frac{1}{2}$ of 1% a month on monies due these same employees also be allowed. (Docket 962)

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 Claimants in this case held positions 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.

The Carrier maintains a facility known as the Eleventh Street Freight Station at Pittsburgh, Pennsylvania, located on its Pittsburgh Region. This is one of the largest such operations on the Carrier's system. Less than car

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 Claimants are not entitled to the compensation which they claim.

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: This claim involves the abolition of two regularly assigned platform gangs and three extra freight trucker positions at the Eleventh Street Freight Station in Pittsburgh, Pennsylvania.

The Carrier argues that the work load at this point decreases cyclically and further that the records indicated they could expect a substantial reduction in the volume of business in 1960. Based on what it claims was a review of its operation, Carrier determined that it was justified in making the aforementioned force reduction.

The Organization claims that the work load did not in fact decrease and that after the force reduction, the extra men remaining, were called upon to perform the work previously handled by the regularly assigned platform gangs.

The Employees first allege that Rule 3-C-2(a)(1) is involved. It reads:

"RULE 3-C-2.

(a) When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or positions remain in existence at the location where the work of the abolished position is to be performed."

They argue that the use of extra gangs to perform part of the work previously performed by the regular gangs is a violation, since extra employees are not positions. It should be pointed out that both prior to the abolishment of the assignments and subsequent thereto, both the regular gangs and the extra gangs performed the work in question.

We concede that extra employees are not positions. However, they do perform work and fill positions which come within the Agreement, and therefore we do not feel it is in violation of the Agreement for the employer to act as the employees allege, in this part of the claim under this rule.

The second rule which is involved by the Organization is 4-A-8(a). It reads as follows:

"RULE 4-A-8.

(a) Every reasonable effort will be made to maintain a maximum number of regularly assigned platform gangs at each freight station or transfer based on the requirements of the service."

The Employees urge that the Carrier did not make a reasonable effort to maintain a "maximum number" of regularly assigned gangs when it effected this force reduction.

We view this rule to be discretionary in nature. By its language, it is necessary for the Carrier to make a determination based on the evidence available. In this case the Carrier decided that the force reduction was necessary. The record does not indicate that this decision amounted to an abuse of discretion. There are no guidelines established for interpreting "reasonable effort" or "requirements of the service." Absent a clear showing that Carrier's discretion was arbitrary or capricious or abusive, we are not inclined to reverse its judgment.

We are of the opinion that the Carrier did not violate the instant Agreement by its actions.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1964.