

Award No. 15505
Docket No. CL-15838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5795) that:

1. The Carrier violated the Clerks' Agreement when on November 25, 1963, and December 2, 1963, it called Extra Truckers J. T. Olsen, A. T. Stopp, J. A. Day, C. E. Davis, W. P. Asan and J. Visintainer to start their shifts at 5:00 A. M. on those dates at Spokane, Washington, freight station.

2. Extra Truckers J. T. Olsen, A. T. Stopp, J. A. Day, C. E. Davis and W. P. Asan will now be allowed one hour's pay at overtime rate on both November 25, 1963, and December 2, 1963, and Extra Trucker J. Visintainer will be allowed one hour's pay at overtime rate on November 25, 1963.

EMPLOYEES' STATEMENT OF FACTS: The above employees were called to report for work at 5:00 A. M. on the dates listed above for the purpose of making an early delivery of freight, and the claims were duly filed by the Division Chairman with Mr. G. H. Baker, Division Superintendent, on December 4, 1963, and declined by him on December 5, 1963. (Employees' Exhibit A.)

Appeal was next taken with Mr. N. B. Beckley, Assistant to Vice-President, the highest officer of the Carrier to whom appeals may be made, by the General Chairman under date of January 15, 1964. (Employees' Exhibit B.)

Mr. Beckley denied the appeal in his letter dated February 25, 1964. (Employees' Exhibit C.)

Under date of March 12, 1964, the General Chairman acknowledged receipt of Mr. Beckley's letter of February 25, 1964, and requested conference for discussion. (Employees' Exhibit D.)

Conferences were held on April 27, 1964, and September 21, 1964.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is an agreement effective May 1, 1955, between the Union Pacific Railroad Company and the Organiza-

tion, a copy of which is on file with the Board, covering the working conditions of clerical employees employed by the Carrier. It is controlling in this dispute.

This dispute challenges the propriety of the Carrier requiring extra employees to commence work at 5 A. M. as extra truckers at the Carrier's freight station at Spokane, Washington, when it became necessary to increase the regular forces with extra forces to handle the volume of work, the amount of which was beyond the capacity of the normal regular forces to handle during the available time.

The necessity and practice of using such extra employees at Spokane arose in November, 1963 as the result of serious complaints registered by the Carrier's patrons. More expeditious service was demanded by the Carrier's patrons which was accompanied with the threat of diverting this business to another Carrier. The traffic involved was obtained through a concerted solicitation with the assurance that shipments would arrive at Spokane in sufficient time to insure early delivery on Monday mornings. At the time this business was first acquired by this Carrier, every effort was made to effect delivery of this merchandise to the consignees with the regularly assigned forces at the freight station. However, the volume was too heavy to enable the regular force to unload the shipments in sufficient time to insure delivery of the merchandise that same day. It then became necessary for the Carrier to augment the regular forces with extra employees and require them to commence work at 5 A. M. in order to fulfill the Carrier's obligation to the shipping public. It should be noted here that the necessity for augmenting the regular forces with extra employees prevailed mostly on Monday mornings. The remainder of the week the work was such that it could generally be performed by the normal regular force.

At no time prior to, nor during the handling of this claim on the property did the Organization suggest or infer that the extra work should be considered as regular work. The Organization throughout has recognized that this was extra work and that the performance thereof did not constitute a regular assignment.

On December 4, 1963, the Division Chairman of the Organization addressed a letter, copy of which is attached as Carrier's Exhibit A, to the Carrier's Superintendent G. H. Baker presenting a claim on behalf of extra Truckers J. Visintainer, J. T. Olsen, A. T. Stopp, J. A. Day, C. E. Davis and W. P. Asan, for one hour's pay at the overtime rate for various dates on which these extra truckers were required to start their shifts at 5 A. M.

OPINION OF BOARD: Carrier called Extra Truckers to work shifts from 5:00 A. M. to 9:00 A. M. on November 25 and on December 2, 1963, at the Spokane Freight Station.

Petitioner alleges that Rule 34 (b) provides that:

"No shift will start or end after 12:00 o'clock midnight or before 6:00 A. M." (Emphasis ours.)

Further, this rule makes no reference to regular assignments, as it clearly states "no shifts" which means "not any" will start after 12 o'clock midnight or before 6:00 A. M. Claim is made therefore for one hour's pay at the overtime rate for each of the extra truckers, on the above dates, who were brought

on duty at 5:00 A. M. Further, that Rule 34 (b) was a war-time rule agreed to by the parties to prevent the starting of any employees after midnight because of reduced transportation to or from work due to war-time conditions, and after the war, Carrier agreed to continue the rule in the Agreements of February 1, 1952 and in the current agreement effective May 1, 1955.

Carrier asserts that because of highly competitive traffic moving into Spokane, it was necessary to bring extra truckers on duty at 5:00 A. M. to augment the regular assigned employee forces; that Section (a) of Rule 34 provides:

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six hours' notice to the employees affected." (Emphasis ours.)

That Section (b) of Rule 34 is complimentary to Section (a) only to the extent of defining when regular assignments will start and end and has no application to extra, temporary or fluctuating forces; that Rule 37, Section (c) provides for method of compensation for extra, temporary or fluctuating forces, under which the Claimants were properly compensated.

In dealing here with the interpretation of Rule 34 and 37 and the sections thereof, we are not in agreement with Petitioner's contentions to support its position that Rule 34, Section (b) applies to "not any" shift and not to regular assignments.

We agree with the reasoning applied in Award 7314 which interpreted subdivisions of a Rule similar to Rule 34 (b) in the instant case. It reads in part:

". . . as in our opinion the same must be read in conjunction with the subject matter under consideration which in this situation must be related back to Rule 8(a) and relates to 'Regular assignments' and not to extra platform employees." (Emphasis ours.)

Rule 34 (b) therefore, relates back to the description which precedes it, being Section (a) "Regular assignments" and not to extra employees. The employees for whom the claim is made were "Extra Truckers" and the starting time rule does not apply.

This Division, in Awards 13695 and 14900, between the same parties, held that where Carrier used extra truckers, loaders, and platform employees to augment regular assigned employees at times of Carrier's expanded need, such employees were fluctuating or temporary forces, not employees with "Regular assignments" and were not entitled to be compensated as a regular employee, but were to be compensated as provided in Rule 37 (c).

We find no ambiguity in the agreement. As argued by the Petitioner, it would have been a simple matter for the parties involved to insert language in Section (b) covering "regular assignments" instead of "no shifts," if such was intended, at the time negotiated. Since they did not do so, Sections (a) and (b) of Rule 34 must be read in conjunction with the subject matter under consideration, that being, "Starting Time," Regular assignments. The rules of the Agreement must be construed together in order to determine the intent of the parties.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.