Award No. 18265
Docket No. CL-18517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

PACIFIC FRUIT EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6716) that:

(a) The Pacific Fruit Express Company violated the current Agreement when on or about March 25, 1966, it failed to properly establish an irregular force to supplement regular forces as provided for under the working rules and, instead, improperly called and used extra employes for the work involved.

(b) The Pacific Fruit Company shall now be required to allow compensation to those named and in the amounts specified below, as submitted to management in the initial claims and subsequent appeals:

CLAIM NO. 1

March 25, 1966:

Claim is for V. B. Silva, J. G. Tarango, S. J. Rico, J. E. Elizondo, G. Rigueroa, V. Pulido, J. M. Chavarria, R. E. Luevano, R. Apodaca and O. Martinez, for eight (8) hours compensation as Iceman and each subsequent work day thereafter, Hours 8:00 A. M. to 4:00 P. M.

March 31, 1966:

Claim is for I. B. Gonzales, J. Hernandez, J. G. Flores, V. B. Silva, J. G. Tarango and J. E. Elizondo, for eight (8) hours compensation and each subsequent work day thereafter. Hours 8:00 A. M. to 4:00 P. M.

April 3, 1966:

Claim is for V. B. Silva, J. G. Tarango, J. E. Elizondo, F. Aguilar and S. J. Rico for eight (8) hours compensation as Iceman and each subsequent work day thereafter. Hours 8:00 A. M. to 4:00 P. M.

April 5, 1966:

Claim is for I. B. Gonzales, J. G. Flores, V. B. Silva, J. G. Tarango, for eight (8) hours compensation as Iceman and each subsequent work day thereafter. Hours 8:00 A. M. to 4:00 P. M. and/or 4:00 P. M. to 12:00 M. N.

April 7, 1966:

Claim is for I. B. Gonzales, J. Hernandez, J. G. Flores, V. B. Silva, J. G. Tarango, J. E. Elizondo, G. H. Vasques, O. Saenz, S. J. Rico and F. Aguilar, for eight (8) hours compensation as Iceman and each subsequent work day thereafter. Hours used were 8:00 A. M. to 4:00 P. M.

April 8, 1966:

Claim is for J. G. Flores, V. B. Silva, J. G. Tarango and O. Saenz, for eight (8) hours compensation as Iceman and each subsequent work day thereafter. Hours used were 8:00 A. M. to 4:00 P. M.

April 9, 1966:

Claim is for J. G. Tarango, G. H. Vasquez, O. Saenz and J. M. Chavarria, for eight (8) hours compensation as Iceman and each subsequent work day thereafter. Hours used were 8:00 A. M. to 4:00 P. M.

April 10, 1966:

Claim is for R. Amaya, O. Martinez, R. Apodaca and J. Jimenz, Jr., for eight (8) hours compensation as Iceman and each subsequent work day therefore. Hours used were 8:00 A. M. to 4:00 P. M.

April 11, 1966:

Claim is for J. A. Favela, I. B. Gonzales, J. G. Flores, O. Saenz, Jose Tarango, S. J. Rico, J. E. Elizondo and G. H. Vasquez, fo reight (8) hours compensation as Iceman for April 12, 1966 and each subsequent work day thereafter. Hours worked 7:59 A. M. to 3:59 P. M.

April 11, 1966:

Claim is for F. Aguilar for eight (8) hours compensation as Iceman for April 12, 1966 and each subsequent work day thereafter. Hours worked 3:59 P. M. to 11:59 P. M.

April 14, 1966:

Claim is for A. Favela, I. B. Gonzales, J. G. Flores, Jose Tarango, S. J. Rico and J. E. Elizondo for eight (8) hours compensation for April 15, 1966, and each subsequent work day thereafter. Hours worked 7:59 A. M. to 3:59 P. M.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date June 1, 1965, (hereinafter referred to as the Agreement) between the Pacific Fruit Express Company (hereinafter referred to as the Company) and its employes represented by the Brotherhood

on this case. Carrier's Manager of Personnel, in his letter dated December 18, 1968, answered them as follows:

"Your appeal of this claim was again discussed thoroughly at our conference held on December 6, 1968. It was stressed then that since there was no departure from long-established Agreement application and practice, all concerned remain at a loss to understand why claim resulted at all in the circumstances.

"However, I did go into detail that Rule 28(a) of the current Agreement provides for establishment of regular assignments, Rule 28(b) for establishment of supplemental assignments during heavy seasons, and Rule 30 provides for the use of Class 3 employes as extra at each location. The use of employes identified as claimants herein was perfectly in order under Rule 30 of the Agreement.

"It was noted the local Brotherhood chose to ignore altogether the application of Rule 30, seeking rather to argue that additional seasonal supplemental positions should have been established. This agrument is unfounded in fact, as well as inconsistent with the Agreement, since the extra calls in this case were not a derivative from any seasonal conditions but rather made account extra work due to (1) a derailment, (2) having to clean cars normally cleaned elsewhere, and unforeseen late arrival of trains.

"The foregoing causes fall squarely under purview of the use of Rule 30 which provides for use of extra unassigned employes. Also, compliance with its provisions would in no way contravene any sections of Rule 28, which were fully complied with. Might add, Rule 13 has no application in the circumstances as the employes were not being regularly assigned, but were recalled and used as extra personnel.

"In view of the foreging, the decision rendered in this case by Agent Brockmoller at El Paso seems based on sound reasoning and proper Agreement application; therefore, his decision will not be upset by me and your appeal in PFE-1935 (SP) is hereby respectfully declined."

7. Therefore, so far as the Carrier is able to determine the basis of this claim, the question to be decided by your Honorable Board is whether the Carrier's action in using Extra Board Class 3 employes at El Paso for extra work violated the Agreement and whether the claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The fundamental issue is whether Rule 28 (b) (Irregular — Seasonal Supplemental Forces) is applicable to the incidents which gave rise to the instant claims. The material portion of Rule 28(b) reads:

"(b) Irregular — Seasonal Supplemental Forces

"1. Class 3 employes will be assigned in accordance with seniority to work additional seasonal positions established to supplement regular forces.

"2. These seasonal supplemental positions will consist of five (5) consecutive days with two (2) consecutive rest days in each seven-day period beginning with the first work day of the position."

and Rule 30 reads:

"Extra boards regulated by the local supervisors and Local Chairmen may be maintained for Class 3 employes at each point. Lists will be posted on the bulletin board showing name and standing of employes assigned to extra boards. Available furloughed employes will be recalled in seniority order for additional positions on the extra board."

Petitioner contends that Rule 28(a) provides for the establishment of a maximum number of regular assignments consistent with the requirements of the service. Rule 28(b) which was agreed to on April 4, 1965 and became effective June 1, 1965, contemplates that the Carrier would maintain a maximum number of regular assignments and a supplementary irregular force. "As a consequence, the necessity for Rule 30 extra board positions was obviated, except insofar as unassigned employes were required to be on call to fill short **vacancies** in accordance with their preference under Rules 6(b) and 31(g)."

Certain basic facts are unchallenged. First, Claimants were Class 3 employes on the Extra Board. Second, Claimants' services were required on the dates in the claims because (1) of a train derailment, (2) of a need to clean cars normally done elsewhere, and (3) of a need to service late arrival trains. Nowhere in the record does the Petitioner challenge or refute these facts. Nor is it denied that the incidents on the dates in the claims could not be foreseen.

The language in Rule 28(b) is clear, meaningful and unambiguous. It provides for the establishment of "seasonal" supplemental positions. They "supplement" the regular assignments prescribed in Rule 28(a) only during "seasonal" requirements. "Seasonal" has a fixed and unmistakable meaning. It not only refers to one of the divisions of the year, as spring, summer, autumn and winter, but when used in an agreement of a business enterprise refers to different periods in a calendar year reflecting the rise and fall of the business volume. Similarly, seasonal employment refers to the fluctuation of the work force with the increase and decrease of business activity.

The word "seasonal" is clear and well understood. In the absence of any ambiguity and an accepted meaning by the parties, this Board may not modify the normal usage of that word in the Agreement. Any other interpretation would be rewriting the Agreement negotiated and agreed to by the parties. This, we have no right to do. We are obligated only to interpret the Agreement before us.

If the parties had intended to nullify Rule 30 they would have deleted it from the Agreement or they would have provided for an exception in Rule 28. Since neither was done, Rule 30 has the same force and effect it had before Rule 28(b) was adopted. If it has any limitation at all it is for the establishment of seasonal supplemental forces as provided in Rule 28(b) applicable only during "seasonal" periods in the context previously

discussed. Rule 28(b) has no application when additional employes are necessary because of unforeseen circumstances.

The settlements on the property, cited by the Petitioner, neither establish a meaningful practice with respect to Rule 28(b) nor can they modify the clear and unambiguous language of that Rule.

For the reasons herein stated, the Board is compelled to hold that there is no merit to the claims.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.

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