NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20469
THIRD DIVISION Docket Number CL-20048

Joseph Lazar, Referee

PARTIES TODIW'JTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on March 19, 20, 21, 22, 23, 24, 25, 26, April 1, 2, 3 and 4, 1972, when it failed to maintain a force of seven (7) Laborers at the Havana Coal Transfer Plant, Havana, Illinois.

2. Because of the violation Carrier shall be required to compensate the following Laborers on dates designated for eight (8) hours time and one-half Laborers rate of pay: Mr. A.F. Eeeck and Mr. H.J. Mibbs March 19, 25, 26, April 1 and 2, Mr. J.H. Siebenborn March 20 and April 3, Mr. R.G. Cardiff March 20, 21, April 3 and 4, Mr. J. Behrends March 21, 22, and April 4, Mr. Doyle March 22 and 23, Mr. M.M. Cowan March 24 and Mr. D.E. Haare for March 24, 1972.

OPINION OF BOARD: The claim here is for time and one-half rate of pay for Laborer8 on the first shift at the Havana Coal Transfer Plant on specified dates when specified Laborers were on their rest days. The claim in this particular docket on which the instant award is made is confined strictly to the Employees' Statement of Facts and Employees' Position in their Submission which is quoted as follows:

"EMPLOYEES' STATEMENT OF FACTS:

The dispute involved herein is predicated upon the provisions of the collective bargaining Agreement entered into by the parties hereto, effective February 1, 1938, as amended and supplemented April 1, 1953, and by this reference is made a part hereof.

Claim was handled in the proper manner, including conference up to and including the highest officer of the Carrier designated to handle claims and grievances, and denied. Conference was held June 16th, 1972.

"The claim originated because the Carrier failed to maintain a force of seven (7) Laborers on the First Shift at the Havana Coal Transfer Plant.

Carrier contends that all claims and contentions are without factual or rules support under the current agreement.

The employees contend that the Carrier must maintain a permanent force of dock laborers at the Havana Coal Transfer Plant consisting of seven (7) men for each shift worked, and that such force shall not be reduced without giving five (5) days notice of such reduction. The notice was not issued.

On March 19th, 1972, the Carrier worked a labor force of four (4) men, and on March 20, 21, 22, 23, 24, 25, 26, April 1, 2, 3, and 4, 1972 the Carrier worked a force of five (5) Laborers, on the First Shift.

The Claimants were observing their assigned Rest Days and were available for work.

EMPLOYEES' POSITION:

It is the position of the employes that the rules provide for seven (7) Laborers to work on each shift worked at the Havana Coal Transfer Plant unless the Carrier issues the required five (5) day notice that the force is being reduced.

The Rule relied on by the employes is a unique rule, entered into by the parties by Supplemental Agreement effective October 1, 1943, reading:

> 'A permanent force of dock laborers at the Havana Coal hansfer Plant shall be established consisting of seven (7) men for each shift worked; such permanent force shall not be reduced without giving five (5) days' notice of such reduction. Laborers employed at said Havana Coal Transfer Plant in excess of said permanent force may be laid off without such notice.'

The employes believe the rule is clear and unambiguous and means just what it says, that is, seven (7) laborers must be on duty each shift worked at the Havana Coal hansfer Plant unless the Carrier issues the five (5) day notice to the contrary.

It is the employes position that the Agreement has been violated, and a sustaining Award is in order, and we pray your Honorable Board will so find.

"All data submitted herein has been presented to the Carrier and made a part of this submission, made in accordance with and subject to the rules of procedure adopted by your Board.

Oral hearing is not desired unless requested by the Carrier, however, the Employees respectfully request they be given a reasonable time within which to answer the Carrier's submission."

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The Carrier states, as a matter of fact, and this is not denied or challenged in any way by Petitioner, that:

"(2) On all dates enumerated in BRAC Local Chairman Stone's letters presenting claims on behalf of certain employees there was neither a need for additional laborers at the dock nor was a fixed number of laborers per shift required. No laborer had been laid off--with or without advance notice; there had been no force reduction affecting the claimants. No employee had been required to suspend work during regular hours to absorb overtime. There were no furloughed non-protected employees, no furloughed protected employeea, and no dock laborers in the employ of the carrier with less than 60 days service. Because less than seven (7) laborers with seniority have for many years and are now employed on two shifts (7 A.M. to 3:30 P.M. and 3:30 P.M. to 12 Midnight), all laborers are entitled to the usual advance notice before being laid off." (Rl.7)

It is abundantly clear from the Carrier's documentation, beyond any shadow of a doubt, that for over thirty years it has been the established practice in the application of Rule 19, that:

"(a) For over 30 years, as currently evidenced by one of the seniority rosters - Roster No. 4 attached as C&IM EXHIBIT 'A', a force of approximately 40 employees has been employed at the coal transfer plant at Havana, Illinois. A portion of this force (laborers) always has been a non-bulletined pool of employees who perform labor work and, when qualified, are upgraded (temporary promotion to a higher-rated job) as needed to perform extra, relief and short vacancy work on bulletined positions.

"(b) Since 1943, the parties have recognized that up to seven (7) of these laborers for each shift worked are entitled to the usual advance notice before being laid off and that laborers in excess of seven on a shift are not entitled to advance lay-off notice."

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The question of contractual interpretation before this Hoard is whether Rule 19 shall be construed (a) as a guarantee rule, as argued by the Organization, stating: "The employes believe the rule is clear and unambiguous and means just what it says, that is, seven (7) laborers must be on duty each shift worked at the Havana Coal Transfer Plant unless the Carrier issues the five (5) day notice to the contrary." or (b) shall be construed as a notice of force reduction rule, as argued by the Carrier: "The advance notice provisions of Rule 19, before and after revisions, have only been applicable to abolishment of positions or reductions in force; they have never been applicable to the blanking of jobs in the bulletined or non-bulletined work force such as here in dispute." (R55)

The question of the meaning of Rule 19 is before this Board. Insofar as we are possessed of the light by which to find and determine the intention of the Parties to their manifest understanding and purpose in using the words they used to express their mutual. promises, it is our obligation and responsibility to do so. When there is mutual accord given to promises and there is respect for the integrity of the agreement as mutually understood by the persons stating their intentions, the parties can enjoy harmonious relations free of dispute and contention. It is the task of this Hoard to work towards these objectives.

In the period of the inception of Rule 19, we note that the lay-off provisions of the collective bargaining agreement then in effect (former Rule 38) were deleted (Ex. F) so that no longer could ALL employees report for work and be laid off without notice. Further, on November 1, 1943, as recognized by Messrs. Schrader and Crim (Ex. G), temporary and extra employees, which included the non-bulletined force of dock laborers in excess of seven (7) per shift worked, were the only ones thereafter not entitled to receive advance notice to be laid off. Rule 19 had its origin by agreement effective October 1, 1943 wherein Messrs. Crim and Scbrader specifically recognized that up to seven (7) dock laborers per shift worked were entitled to a five-day advance notice of force reduction and that those in excess of such seven could be laid off without advance notice (Ex. H).

We are satisfied that the historical context of Rule 19 shows its intendment to be an advance notice of force reduction rule. Furthermore, it is crystal clear that the thirty-year past practice is fully consistent with such construction. It is evident, moreover, that Rule 19 does not contain the terms "seven (7) laborers must be on duty each shift worked at the Havana Coal Transfer Plant unless the Carrier issues the five (5) day notice to the contrary." which are argued for by the Organization in its Position. The terms "permanent force" in Rule 19 is no guarantee of a fixed force; the terms relate to an indefinite duration of time during which such force of seven men for each shift worked shall not be reduced without giving five (5) days' notice of such reduction. Rule 19 has been construed by the parties by their established practice to permit the blanking of positions where the force of dock laborers consists of seven (7) men or less for each shift worked without the giving of such notice required for force reduction. Conceivably, a point in time and circumstance may be reached wherein "blanking" constitutes force "reduction", but such a question is not raised in the Organization's Submission and is not involved herein.

We have carefully considered the record of claims as handled by the Parties, and have considered the Carrier's letter of December 29, 1967 (R49), but believe that this record supports the past construction of Rule 19, the Carrier's letter of December 29, 1967 having been cancelled and not implemented (R22). We conclude, on the record of this particular case, that the Agreement has not been violated.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: G. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.

LABOR MEMBER'S DISSENT
TO AWARD 20469 (Docket CL-20048)
(Referee Lazar)

Award 20469 is in error. me majority purports to interpret the disputed rule on the basis of "past practice." However, the majority gives weight to only the past practice allegations of the Carrier and ignores the fact that the past practice alleged has been, from time to time, the cause of claims and grievances adjusted by the parties on the property. On one occasion (December 29, 1967), Carrier's application of the permanent force or manning Agreement resulted in a settlement agreement upholding the Employes' contentions that Carrier's administration of the Agreement was improper. The fact that the claims of record were withdrawn without prejudice does not support Carrier's past practice allegation. See Awards of this Board:

Award	Referee
11031	Hall
12667	Dorsey
13940	Dorsey
13994	Dolnick
14204	Seff
14599	Ives
14679	Dorsey
14903	Dolnick
15941	Heskett
18287	Dorsey
18345	Dolnick
19495	Hayes
19542	O'Brien
19552	Edgett

Award 20469 is palpably in error, and I dissent.

J. C. FLETCHER
11-5-74