

Award No. 1421

Docket No. CL-1472

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

George E. Bushnell, Referee

PARTIES TO DISPUTE:

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

THE ST. PAUL UNION DEPOT COMPANY

STATEMENT OF CLAIM: "Claim of the Terminal Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement and the seniority rights of Wm. Hahn, R. B. Mack and others, when it failed to comply with seniority rules in assigning and working the employes in filling vacancies and in doing extra work. As a result of these violations, the above named and other employes were not properly worked and compensated on various dates since Feb. 1, 1939. Therefore they shall now be paid in accordance with the rules of the agreement for wage losses suffered."

There is in evidence an agreement between the parties bearing effective date of August 1, 1924.

EMPLOYES' STATEMENT OF FACTS: "On or about Feb. 1, 1939, and on various dates since, the Carrier discontinued calling and assigning furloughed and short-shift employes according to their seniority to fill vacancies on eight hour positions and do extra work, unless the employes agreed to suspend work on their regular short-shift to absorb the overtime, or lay off so as not to perform more than eight hours service within a period of twenty four hours computed from the starting time of their previous assignment."

POSITION OF EMPLOYES: "The employes contend this is in violation of rules 1—Employes Affected, 3—Seniority Datum, Method of Assignment, 4—Promotion Basis, 6—Vacancies and New Positions, 16—Reducing Force, 45—Overtime and 47—Absorbing Overtime reading as follows:

'Rule 1—Employes Affected. These rules shall govern the hours of service and the working conditions of the following employes, subject to the exceptions noted below, and will supersede all previous schedules, agreements, practices and working conditions:

'(1) Clerks.

'(2) Other office and station employes, such as office boys, messengers, chore boys, and operators of office equipment and devices.

'(3) Train announcers, information clerks, gatemen, platform men, checkers, baggage, mail and parcel room employes, milk and railroad supply house employes, truck watchmen, and railroad mail sorters.

'(4) Telephone switchboard operators and elevator operators.

"We have a regularly assigned eight-hour shift, we have a regularly assigned short-shift, and we have an extra list. The short shift force when available in accordance with our agreement, are assigned to eight-hour positions when vacant, the men on the extra list are assigned to fill short shift vacancies as well as eight hour vacancies, if the positions are for less than thirty days, providing there are not short shift men available for the positions. This is the procedure in effect so far as filling vacant positions is concerned.

"The Depot Company cannot be asked to abide by the request of the organization as same will compel the Depot Company to pay penalty overtime when there are other men available for the positions without necessity of paying penalty overtime.

"In several discussions with Mr. Twomey, representative of the organization, we so stated our position and we requested Mr. Twomey to make an agreement whereby such conditions as are complained of in the present Statement of Claim should be taken care of, and so, that short-shift assigned employees could fill the vacancies without penalty to the Depot Company, but Mr. Twomey would not consider such request."

OPINION OF BOARD: There is no important disagreement between the parties as to the facts in this case; briefly stated, they are:

On February 1, 1939, the employees were verbally advised by the carrier that thereafter carrier would not call the so-called short-shift men according to their seniority rights to fill vacancies and to do extra work, if it required more than eight hours service within a period of twenty-four, computed from the starting time of their previous assignment. Thereupon the petitioner, at conference on February 6, 1939, and by letter of February 9, 1939, notified the carrier that petitioner was claiming "any loss in earnings suffered by employees on the short-shift account of their not being called according to their seniority to fill vacancies and to do extra work since February 1, 1939."

On February 14, 1939, the carrier advised the petitioner in part:

"Your claim is denied because of the fact that in your letter to me dated November 12th, 1938, you filed claim because we started Chas. Reider on his Tuesday shift within 24 hours of the starting time of his Monday shift, basing your claim upon Award No. 657, Docket C. L. 651, wherein it was ordered that an assignment or a day means a period of 24 hours computed from the beginning of a previous assignment.

We acknowledged that award and agreed to pay back pay to Reider. We have followed that order or award in every case since Feb. 1st, 1939, and have offered to give the temporary full time vacancies to the short time force according to their seniority if they are willing to allow the necessary lapse of time after their last assignment."

The award referred to by the carrier was intended to be No. 687 instead of 657, applying to the employees on another carrier. However, carrier "acknowledged that award and agreed to pay back pay to Reider." Carrier also stated that it had followed that order and award in every case since Feb. 1, 1939, and that carrier had offered to let the short-hour employees continue to fill temporary full time vacancies "according to their seniority" if these employees would allow the necessary lapse of time after their last assignment. The award under discussion, No. 687, provided for time and one-half for all service in excess of eight hours within a twenty-four hour period.

Carrier in its submission states:

"We have a regularly assigned eight-hour shift, we have a regularly assigned short-shift, and we have an extra list. The short-shift force when available in accordance with our agreement, are assigned to eight-hour positions when vacant, the men on the extra list are assigned to fill short shift vacancies as well as eight-hour vacancies, if the positions are for less than thirty days, providing there are short shift men available for the positions. This is the procedure in effect so far as filling vacant positions is concerned."

While carrier has argued that some of the short-hour employees have refused or declined extra work in relieving regular eight-hour assignments, such is not the case with claimants Hahn and Mack. Carrier states: "they have not refused to fill eight-hour vacancies."

In commenting on the result of a conference between the parties held on February 17, 1939, carrier states:

"and we, at that time, suggested that we make an exception to the short-shift force so as to give them every opportunity to be assigned to any eight-hour vacancy. Our proposal was that any man that was relieved for a period of twelve hours, could be used on an assignment without penalty to the company."

Carrier now argues in effect that because it has "acknowledged" an award on another carrier as calling for the payment of time and one-half for all time after eight hours within a spread of 24, and has so compensated employees since February 1, 1939, these so-called short-hour employees are not available for extra work as they have been over the past years, because some of the time they work may run into and require overtime payments; that because Hahn worked from 6:15 to 10:00 P. M. on Feb. 1, 1939, and Mack the same hours on Feb. 7, 1939, they were "not available" for work during the hours 1:30 to 10:00 P. M. on Feb. 2nd and 8th, respectively.

With these contentions the Board cannot agree. The agreement clearly provides, and it has been so understood and applied since its inception, that these short-hour employees will be given preference in minor vacancies that occur and permitted to perform all extra work. Under the seniority provisions of the agreement these so-called short-hour men have, since the effective date of the current agreement, been assigned to temporary vacancies in eight hour shifts in accordance with their seniority rank. The carrier admits this in its submission.

The record of this case shows conclusively that on and after February 1, 1939, the carrier arbitrarily changed the accepted and agreed upon application of the current agreement; that the instant claim is the result of the action taken by the carrier, and that such action was contrary to the provisions of the current agreement as it has been understood and applied by the parties for many years.

With respect to the application of Rule No. 29, cited by the carrier, the Board finds that this rule has no application in the instant case. Compare Award No. 1060. This claim was filed by the Brotherhood, one of the parties to the agreement who had the right to insist upon the carrier complying with its contractual obligation, or compensate all employees accordingly, which the petitioner is here doing. Such was the claim of the petitioner from the very inception of this dispute, his letter of Feb. 9, 1939, upon the carrier's arbitrary change in the application of the agreement effective Feb. 1, 1939.

The awards cited by the carrier, viz. 417, 595, 799, 942, 993, 998 and 463, have no application in this case.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 has violated the current agreements as contended by the petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of May, 1941.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 1421
DOCKET No. CL-1472**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Em-
ployes

NAME OF CARRIER: The Saint Paul Union Depot Company

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The petitioners in their letter of September 3, 1941 proposed three questions for answer as given below:

The answers to these questions are to be taken as this Division's interpretation of the award.

"(1) Are the employees referred to as 'others' and other employees in the Statement of Claim in Award No. 1421, Docket No. CL-1472, entitled to wage losses suffered under the provisions of that award?"

Answer: Yes. The award so held.

"(2) Are such other employees required to now file claims with the carrier for the amount of wage loss suffered by reason of carrier's violation of agreement as contended by the petitioner?"

Answer: No. The award sustained the claim as worded including the claims of "others." The Order of the Board dated May 12, 1941 directed the Company "to pay to the employee (or employees) the sum to which he is (or they are) entitled under the award on or before July 16, 1941." The records of employment for the period involved in the claim are in the possession and under the control of the Company and it knows or should know who is entitled to be paid and how much.

"(3) Shall the representative of the employees be permitted to check the payrolls of the carrier, time clock cards of employees and other records in accordance with Rule 4 referred to in the last paragraph of Position of Employees (quoted on Page 5 of carrier's answer to employees position) to determine such employees as are entitled to receive wage reimbursements?"

Answer: Yes, and why not even regardless of Rule 4? It is to be assumed that the parties both desire a termination of the dispute and a just adjudication of compensation. We see no resulting harm from such a joint check and it will undoubtedly obviate further dispute. Such a joint check was ordered by the Board in Award 330 of this Division. In Award 1218 of this Division the matter was remanded for a like result. Award 906, claimed to be contra, has been examined but that claim as pointed out by Referee Garrison was

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 2 TO AWARD NO. 1421
DOCKET NO. CL-1472**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: The Saint Paul Union Depot Company

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 2, 1934, the following further interpretation is made:

The petitioners in their letter of October 17, 1942, proposed three questions for answer as given below:

The answers to these questions are to be taken as this Division's further interpretation of the award.

(1) Are the employees entitled to wage losses in excess of eight (8) hours on any day under the provisions of Award No. 1421, Docket No. CL-1472, account of the carrier's violation of the agreement as contended by the petitioner in the Statement of Claim?

The answer is No. Had the employees been called according to their seniority rights and not been used on the short shift, they ordinarily would only have worked eight (8) hours and earned pay for eight (8) hours. They are only entitled because of the violation of the agreement to their loss of earnings for the remainder of the unworked eight (8) hours. This does not include overtime pay unless they had been called later in the day after working on the short shift. In this event they would be entitled to pay for the actual time worked, and if this resulted in working overtime, they would be entitled to overtime pay. However, in this instance the employees concerned did not work overtime.

(2) Did employees who signed a slip waiving their rights to work on a certain day or shift waive their rights to wage losses for the entire period sustained in the Statement of Claim?

The answer to the question as worded is No, but the question is not in accord with the facts set up in the file. According to the waivers (see letters of R. B. Anderson and N. J. Mathison which appear on page 2 of Carrier's letter of February 15, 1943, to Secretary Johnson), these employees signed a writing on June 2, 1941, which said that they did not want afternoon or night work. It is true that these waivers, dated after the award, in their exact language are not retroactive, but the Carrier's statement is not denied that, in effect, these written waivers were in confirmation of repeated former oral statements of these employees. They are sufficient in the light of these undenied statements to constitute waivers for the entire period and "until further notice."

(3) Are employees who were required by the Carrier to suspend work during regular hours to absorb overtime entitled to compensation under the provisions of Award No. 1421—Docket No. CL-1472, for such hours?

Yes, but not unless proof is made that Rule 47 has been violated. The question as worded is but another way of stating the problem presented by question One (1). No showing is made in this file that any employe was required to suspend work in order to absorb overtime. Until a claim is made, specific determination cannot be made for the reason that interpretation depends on the facts in the light of Rule 47 and former Awards applicable thereto.

Referee George E. Bushnell, who sat with the Division as a member when Award No. 1421 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1943.