Award No. 2354
Docket No. CL-2424

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

Scott M. Loftin and John W. Martin, Trustees

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

(a) Position of Porter, Daytona Beach Ticket Agency, was abolished in violation of rules of Clerks' Agreement, as hereinafter stipulated, effective May 16, 1942, and—

(b) that position shall now be re-established and employes affected shall be compensated for any wage losses resulting from carrier's action:

EMPLOYES' STATEMENT OF FACTS: Prior to May 16, 1942, there was in existence at Daytona Beach Ticket Agency Group 3 position of porter, whose duties, among other things, consisted of handling of trucks and baggage to and from trains. Effective May 16, 1942, this position was abolished, and employes in Group 1 were required to take over handling of trucks and baggage to and from trains.

POSITION OF EMPLOYES: In support of this claim, the following rules of January 1, 1938 agreement are cited by the employes:

Rule 1

"These rules shall govern the hours of service and working conditions of the following employes subject to the exceptions noted below:

Group (1) Clerks—(a) Clerical workers
(b) Machine operators

Group (3) Laborers employed in and around stations, storehouses and warehouses; baggage, mail and parcel room porters, janitors and maids."

Rule 2

"(a) Clerical workers. Employes who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence, and similar work."

"(3) Employes performing manual work not requiring clerical ability."

As a matter of fact, it is not understood that the Brotherhood expected to accomplish anything by the inclusion of these words in its claim, since the position in question was re-established on December 8, 1942, and has been in effect continuously since that time. (See Item 6, Carrier's Statement of Facts.)

19. It is the prerogative of the Carrier to distribute the work to be done in any manner not prohibited by the Agreement. The Carrier may choose to continue the abolition of the position and have the work performed by some other porter. In fact, in the interest of better service, just that was done when on July 10, 1942, the hours of the night porter were changed so that he might perform the work of handling baggage to and from Train No. 4. See Award 1314 of the Third Division.

20. In the handling of this case on the property, the General Chairman has explored the possibilities of various and sundry rules in his efforts to find a solid basis on which to proceed. At first he contended that Rules 3 and 5 (Seniority Data and Seniority Districts) called for penalty payments to the cut off porter. In his appeal to the General Superintendent he asked for re-establishment of Position No. 2656, and added the thought that perhaps he would use Rule 46 (Notified or Called) to collect extra pay for the night porter. At the conference with the General Superintendent he shifted to Rule 23 (Transferring Seniority), and made an unexplained side reference to Rule 45-b (Overtime) as a basis for his claim. And in a letter addressed to the General Superintendent on June 8, 1943, after the Carrier had received request from the Secretary of the Third Division that it file a submission in this case (See Item 9 of Carrier's Statement of Facts), the General Chairman added the following rules to those which he said were "pertinent in the handling of this claim":

Rule 1—Scope
Rule 2—Definition of Clerical Workers, Etc.
Rule 6—Seniority Rosters
Rule 7—Exercise of Seniority
Rule 9—Bulletins
Rule 19—Reducing Forces
Rule 66—Rates

21. Apparently the only way in which the Carrier could have avoided this claim by the General Chairman would have been to continue in effect temporary porter position No. 2656 after the work which it was created to perform had disappeared, employing the claimant a full eight hours each day to carry an average of 7.13 bags per day to Train No. 4 and an average of less than one bag per day from Train No. 4—work which requires not more than 20 minutes per day to perform, and work which was just as well performed by another employe within the terms of the same agreement, paid at a higher rate.

Certainly, in times like these, when the manpower of the Nation is being diverted from industrial activities to military channels, and this Carrier, like many others, is finding it impossible to secure a sufficient number of employes to fill all of the essential jobs, there is less justification than ever before, if any ever did exist, for efforts to be made to create unnecessary extra jobs. It is not held by the Carrier that the emergency with which the Nation is confronted should be employed as a device to breach agreement rules, and that is something which the Carrier has not done; but it is the contention of the Carrier that during the present emergency the employes should not be permitted to utilize such a strained and forced "interpretation" of agreement rules as the General Chairman is advancing in this case, to serve no better purpose than to make additional jobs, in the face of a shortage of men for essential occupations.

OPINION OF BOARD: The question to be determined here is whether the Carrier may abolish a Group 3 position because of a reduction of business and assign the work remaining to a Group 1 employe without violating the Clerks' Agreement.

The record shows that prior to May 16, 1942, there were three baggage porters assigned at Daytona Beach Ticket Agency. These employes were all Group 3 employes, under the classifications contained in Rule 1. On May 16, 1942, one position as baggage porter was discontinued and thereafter some of his work was assigned to an employe in Group 1. It is the contention of the Employes' Organization that Groups 1 and 3 as classified in Rule 1 constitute separate and distinct seniority districts and that a transfer of work from one seniority district to the other violates the applicable Agreement.

This Division is committed to the rule that a Carrier cannot remove work from the limitations of one seniority district and assign it to employes in another, even if such employes are covered by the same Agreement. See Awards 973, 975, 1306, 1611 and 1808. The Carrier argues, however, that Groups 1 and 3 as shown in Rule 1 of the Agreement are not separate seniority districts and consequently there was no transfer of work from one to the other. Our decision hinges on the determination of this question.

Rule 1 classifies the employes under the Clerks' Agreement in accordance with the character and amount of work assigned to them. Rule 6 provides for the issuance of three separate seniority rosters for employes covered by Groups 1, 2 and 3. Rule 5 provides for a larger seniority district for employes in Groups 1 and 2, and confines the seniority district of Group 3 employes to the point and in the department in which they are employed. In view of the arguments presented, a careful analysis of Rule 5 seems warranted.

It will be observed that Rule 5 is generally entitled "Seniority Districts." This subject is subdivided into two general sections designated (a) and (b). Section (a) purports to establish four seniority districts for employes in Groups 1 and 2, and excludes Group 3 from consideration altogether. Certainly, then, the four designated and defined seniority districts apply only to Groups 1 and 2 and have no relation whatever to Group 3 employes. Section (b), however, undertakes to deal with the suject of seniority districts as it applies to Group 3 employes, the Group excluded under Section (a). Section (b) states that "The seniority of Group 3 employes will be confined to the point and in the department in which employed." Every element necessary to the formation of a seniority district is contained in Section (b) when it is considered along with the form and contents of Rule 5.

The Carrier contends that it was the intent of the rule to include Group 3 employes in the seniority districts specifically described in Section (a) of Rule 5. The Agreement sustains no such interpretation, the fact being that Section (a) is specifically limited to Groups 1 and 2. The intent of Rule 5 is so clear and unambiguous that it is not subject to construction. It is a fundamental rule of contract interpretation that if a provision is clear, definite and plain in meaning, it must be enforced as made. It is only when its meaning is uncertain and ambiguous that the rules of construction will be resorted to for the purpose of determining what the parties meant. Whatever may be the holdings under different contracts or practices on other roads, the form and language of the Agreement before us leads to but one conclusion,—that Group 3 employes are in separate seniority districts limited to the point and in the department in which employed. To us, any other holding would do violence to the plain provisions of the Agreement.

Applying these findings to the case before us, the seniority rights of the Group 3 employe here involved are confined to Daytona Beach Ticket Agency and the Group 1 employe to whom a part of his work was assigned holds seniority rights in the Jacksonville to St. Lucie district as defined in Section (a) of Rule 5. Group 1 employes hold no seniority rights on the Group 3 seniority roster at Daytona Beach Ticket Agency. Under this state of facts, it seems clear that the porter's position involved here was filled prior to May 16, 1942, by the employe having senior rights in Group 3 at that point and in which the Group 1 employe, to whom a part of the work was subsequently assigned when the position was abolished, had no seniority rights whatsoever.

There was, therefore, a transfer of work from one seniority district to another in violation of the terms of the particular agreement governing this case.

While it is true, as contended by the Carrier, that the Group 3 work assigned to the Group 1 employe appeared to be relatively small, this is not a controlling factor under the holdings of this Division. See Awards 1611 and 1612.

The record shows that the abolished position was restored on December 8, 1942. That part of the claim which demanded the restoration of the position has therefore become moot. The record further shows all the work of the abolished position was restored to Group 3 employes on July 10, 1942. The rights of the employes affected, to recover wage losses as claimed in part (b) of the Statement of Claim is consequently limited to the period from May 16, 1942, to July 10, 1942. As so limited, the Claim should be sustained.

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 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 violated the Clerks' Agreement in assigning Group 3 work to a Group 1 employe after discontinuing the Group 3 position, the same resulting in a transfer of work from one seniority district to another.

AWARD

Claim (a) sustained; Claim (b) sustained as limited by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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

DISSENT TO AWARD NO. 2354, DOCKET NO. CL-2424

The errors in this Award result from giving unintended meaning to Rules 5 (b) and 6, which rules relate only to seniority and to rosters, in that:

(1) The Award thus unwarrantably nullifies the rights of employes in either Group 1, 2, or 3 to perform work normally the duties of employes of either of such groups other than their own group so long as such performance is in conformity with the Agreement in its entirety.

(2) The Award improperly read into paragraph (b) of Rule 5 the word "district," thus leading to the erroneous conclusion that Rule 5 (b), which reads:

> "(b) The seniority of Group 3 employes will be confined to the point and in the department in which employed."

provided for a separate seniority district for Group 3 employes, when the intention of the rule was to prescribe departmental point seniority for Group 3 employes in the seniority districts otherwise specified.

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ C. C. Cook
/s/ R. H. Allison
/s/ A. H. Jones