Award No. 2585
Docket No. CL-2441

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(1) The carrier has violated and continues to violate Rules 30, 31 and 33 of our current agreement with the carrier when it uses employes from seniority roster No. 4, San Francisco Freight Station, to perform work on roster No. 5 in San Francisco Third Street Station Baggageroom.

(2) That seven employes of roster 5 available and qualified to perform the work on roster 5 that has been and is being performed by employes from roster 4, shall be compensated for the work performed on call basis at the established rate under provisions of Rule 21 of our current agreement, for each and all days upon which roster 4 employes have been and are used to perform work on roster 5, such compensation to be retroactive to November 22, 1941, the date on which protest and claim filed by Division Chairman with Division Superintendent.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The employes involved in this claim are covered by the agreement.

Rules 30, 31, 32 and 33 of our current agreement read as follows:

Rule 30 is a very long rule, and to avoid burdening the record, we quote only sufficient thereof to show that our seniority districts are composed of one or more rosters.

"SENIORITY ROSTERS

Rule 30.

A seniority roster shall be prepared for each seniority district, except as follows: * * *

OPERATING DIVISIONS:

Each Operating Division shall constitute a separate seniority District.

COAST DIVISION:

Roster

1. Office of Division Superintendent (including immediate offices of Assistant Superintendent, Trainmaster, Chief Dispatcher, Master Mechanic, Division Engineer, Roadmaster).

impose such a requirement upon the carrier. On the contrary, **it is an established, and irrefutable fact that it has been the agreed-upon practice, to use employes from roster No. 4 (the freight station) to perform those duties.** Award 2011 of this Board conclusively establishes the propriety of the carrier's position in this docket and recognizes that incidental service of the nature here involved is not reserved exclusively to employes of roster No. 5.

When this case was discussed at conference on May 15, 1942, the petitioner's general chairman endeavored to justify the claim by citing Awards 973, 975, 1403 and 1440 of this Division. An analysis of said awards indicated that the question in those cases concerned the use of employes of one seniority district to perform the work of employes on another and separate seniority district. The general chairman was informed that those awards involved a matter entirely foreign to the issue in the instant claim because **the employes here involved are of the same seniority district** (see Rule 30 (Exhibit "G")).

In the course of the discussion of this case at conference, May 15, 1942, the petitioner's division chairman raised the question of obtaining certain wage increases for various employes on the Coast Division and at that time stated that if said wage increases were granted by the carrier, the instant claim would be abandoned. Subsequently, with a letter dated May 18, 1942 (Exhibit "H"), petitioner's general chairman submitted to the assistant manager of personnel a counterpart of the division chairman's letter of the same date indicating what the latter desired in way of increases, which if granted would have resulted in the abandonment of this claim. The proposed wage increases were not acceptable for several reasons, first, because the carrier was within its rights in using employes of roster No. 4 for the necessary short periods to assist roster No. 5 employes at the baggageroom; second, because there was no justification for the proposed increases; and third—if there was any justification for said proposed increases they should, as individual cases, be handled on their respective merits.

The foregoing illustrates that the instant claim was made in bad faith; that it was initiated and designed for a purpose other than to establish the right of employes of roster No. 5 to perform the service in question.

CONCLUSION

The carrier respectfully submits that it is incumbent upon the Division to dismiss the claim involved in this docket for want of jurisdiction; however, if the Division does assume jurisdiction then the carrier submits that the said claim being without merit should be denied.

OPINION OF BOARD: The carrier's passenger station is about a block distant from its freight station. Although the two stations are in the same seniority district, under the controlling agreement the baggageroom employes in the passenger station and the freight house employes hold seniority rights under separate seniority rosters—the employes at the freight station being on roster No. 4; and those at the passenger station on roster No. 5. Under the agreement the seniority rights of employes on the respective rosters are no different than they would be if the stations were in different seniority districts. In other words, the employes on the respective rosters have the prior right to claim and perform work falling within the scope or purpose for which the roster is set up. By the same token, the carrier is precluded from assigning employes on one roster to perform work falling within the scope of another roster—the well established rule as applied to employes in different seniority districts being applicable. Awards Nos. 973, 975, 1306, 1808. (Parenthetically, it is to be noted that the Awards cited except 1306 refute the contention of the carrier that the instant claim is ambiguous and indefinite because it fails to name the employes on roster No. 5 whose rights have been affected by the assignment of freight house employes to work in the baggage room.)

So, we start off with what amounts to a patent violation of the agreement—the fact being admitted that the carrier used employes on roster No.

4 to perform work that properly belongs to employes on roster No. 5. The carrier seeks to justify its action by historical practice and an oral agreement had with the Division Chairman of the Brotherhood, by which the carrier was permitted to use freight station employes for work at the passenger station during certain hours when the work there was too heavy for the regular force to handle. That the understanding was had as claimed by the carrier, we have no doubt. Nor can there be any doubt that the understanding was **not** in accord with the provisions of the controlling agreement with respect to the seniority rights of employes on roster No. 5. Such understandings as that had between the carrier and the Division Chairman cannot serve to modify the terms of the controlling agreement between the carrier and the organization. To hold otherwise would soon effectually destroy such agreements. For Division Chairmen are prone, in the settlement of disputes, to compromise on terms less than the agreement between the carrier and the organization demand. Such understandings, or contracts, as the carrier here relies upon, can have no binding force beyond the point that it has been acted upon. Either party is at liberty to repudiate it and demand the rights accorded by the agreement between the organization and the carrier. The System Committee recognized this principle in demanding reparation only from November 22, 1941—ten days subsequent to the date it made the claim which forms the basis of the instant dispute.

The carrier contends that the claim is prosecuted in bad faith. We shall not review the facts upon which this charge is made. By it, the carrier simply tries to inject a collateral issue which has no bearing upon the real issue in this dispute: whether the carrier violated the agreement in assigning employes on roster No. 4 to do work which employes on roster No. 5 were entitled to perform? The fact is admitted. Clearly, the action of the carrier violated the seniority rights guaranteed to the employes on roster No. 5 by Rules 30, 31 and 32. And, under Rule 21, they were entitled to be called to perform the work.

The plea that reparation should not be made retroactive does not appeal to us. The employes were demanding only what they were justly entitled to under the agreement and the decisions of this Board. Reparation will date from November 22, 1941. See Awards Nos. 685 and 2282. The dispute will be remanded for further negotiation on the property to determine the employes entitled to reparation and the amounts to which they are entitled under Rule 21.

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 agreement.

AWARD

Claim sustained as indicated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.