Award No. 3700
Docket No. CL-3747

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD COMPANY, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood on the New York Central Railroad Company, Buffalo and East:

(1) That method used by Management to compute earnings of Mr. J. G. Schemehl, Clerk at 33rd Street Yard, New York City, on August 8, 11 and 15, 1943, was improper and in violation of the Agreement.

(2) That Mr. Schemehl be reimbursed for the difference between compensation he received in these instances and the amount of his earnings when computed in accordance with the provisions of the Agreement, viz., on the basis of pro rata pay at $155.68 rate for the first 8 hours which he worked on his regular position and time and one-half pay at $181.12 rate for the next 8 hours which he was required to work on this different and higher rated position.

JOINT STATEMENT OF FACTS: J. G. Schemehl was regularly assigned to the 8:00 A. M. to 4:00 P. M. yard clerk's position at 33rd Street Yard, New York, N. Y., the monthly rate for which was $155.68.

D. J. McCann, the regular incumbent of position of yard clerk, rate $181.12 per month, assigned to work from 4:00 P. M. to 12:00 Midnight, reported off duty on August 8, 11 and 15, 1943, on account of sickness.

No extra clerks being available, Schemehl, upon completion of his regular assignment from 8:00 A. M. to 4:00 P. M., was continued on duty and worked until 12:00 Midnight on August 8, 11 and 15, 1943, or a total of 16 hours' service on each of those dates.

For the overtime beyond his regular working hours on each of the dates in question, Schemehl was paid the time and one-half rate of his regular position ($155.68 per month).

POSITION OF EMPLOYES: In order that the point at issue in this dispute may be brought into sharp focus, we quote below from correspondence which was exchanged between Mr. G. O. Price, General Chairman, and Mr. C. A. Raymonda, Assistant General Manager:

With regard to Employes' Exhibit 7, Carrier not only points out that nowhere in those letters is there any mention of a case of an employe who fills his own assignment and then works overtime to take care of the work of another employe's assignment but also points to Carrier's Exhibit 17 which is also a letter from Mr. Walber in which he dwelt at length on such overtime cases. That letter was written on December 6, 1935, the same year, but after his correspondence with General Chairman Price (Employes' Exhibit 7), and it is very evident from his expressions therein that it was not his understanding that the question and answer interpretation adopted in September, 1934 had any bearing whatsoever on the case of the employe who works overtime in addition to filling his own assignment.

Furthermore, the ruling made by Mr. Walber in Exhibit 17 was entirely consistent with the rulings contained in other exhibits. In fact, Mr. Walber referred to Docket 217 of the Wage Committee which is Carrier's Exhibit 12.

The Clerks' Committee in the Buffalo territory accepted Mr. Walber's ruling in the Exhibit 17 case, and it was closed accordingly.

CONCLUSIONS.

Carrier has shown—

a. That there has been a definite and consistent practice, acquiesced in by both Line East and Line West committees over a period of many years;

b. That Claimant Schemehl was paid in accordance with said practice;

c. That said practice is equivalent to a negotiated rule and can only be changed through the serving of 30 days' notice and subsequent meeting of the minds;

d. That the employes have served no such notice, or otherwise made an effort to follow the orderly course under the Railway Labor Act, but have chosen the unorthodox course of denying responsibility for settlements made by deceased General Chairman Robertson, one of which is filed as Carrier's Exhibit 18, and also of repudiating the interpretation of the rules given to Carrier by General Chairman Winston, Carrier's Exhibit 13;

> (If the employes can escape their obligations and responsibilities in this manner, any agreement or settlement with Carrier could be upset by merely changing committeemen or representatives.)

e. That the aforesaid recognized practice was adopted from and based upon decisions and interpretations of the Railroad Labor Board which for 20 years and more the Line East and Line West committees accepted as controlling;

f. That this dispute should be decided by the Adjustment Board on the record herein presented and not upon the basis of situations or conditions which it may have found on other railroads.

Wherefor, the claim should be denied.

(Exhibits are not reproduced.)

OPINION OF BOARD: J. G. Schemehl, a clerk at the Carrier's 33rd Street Yard, New York City, on three different days in 1943 worked his own trick, then the trick of another higher-rated employe who was sick. The Carrier paid Schemehl overtime on the basis of his own rate. The Organization claims his overtime should have been computed on the rate of the job he filled while working overtime, and cites Rules 30 and 38 (Overtime and Preservation of Rates).

The Carrier relies on past practice and a number of decisions of the long-deceased United States Railroad Labor Board.

True, this Board in Award 1246 stated that "if an agreement is susceptible to two different meanings then what the parties have done under it would be the proper interpretation of the rule". If Rules 30 and 38, read together, were susceptible to two different meanings, then, this Board should look with a great deal of sympathy on the Carrier's argument of past practice. The same basic question presented here has arisen several times on the Carrier's property, and each time it was settled as the Carrier contends the case before us should be settled. Once this conclusion was reached on the basis of an opinion from an official of the Organization, and at least one other time with the Organization's acquiescence. However, all of these calls for interpretation, as far as the record shows, came in the 20's and 30's, the last in 1935. They are not governing now, in view of the clear meaning of Rules 30 and 38, read together.

Nor are decisions of the United States Railroad Labor Board, now defunct. They may properly be cited for what they are worth in shedding light on cases before this board, just as old English court decisions are frequently cited in our judicial processes. They carry that much weight, and no more.

We will find that Clerk Schemehl was clearly entitled to time and one-half the higher rate for those hours he substituted in the higher rated position, in accordance with Rules 30 and 38, read together as they must be.

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 parties waived oral hearings thereon;

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 Rules 30 and 38 of the Agreement, read together.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1947.