Award No. 3720
Docket No. CL-3658

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on Saturday afternoons, commencing September 1, 1945, the effective date of Arbitration Board's Award No. 43, Case A-1627, and as herein shown on August 17, September 7 and 14, 1946, the Management required the clerical employes in the office of Auditor Freight Receipts, whose normal and regular Saturday tour of duty ended at 12:40 and 12:50 P. M. to work until 4:55 and 5:05 P. M., their ordinary and normal quitting time on other days of the week in the performance of work that was not necessary to be performed on Saturday afternoons within the meaning of the Saturday Afternoon Rule—Arbitration Award 43, Case A-1627, dated August 21, 1945, and as subsequently interpreted by the Reconvened Board in its rulings dated June 28, 1946.

Note: As evidence of the practice prevailing in this office, there is herein cited in the first paragraph of Employes' "Statement of Claim" the specific condition that prevailed on Saturdays, August 17th, September 7th and September 14, 1946. This citation is made as being representative of conditions that prevailed in this office on other Saturdays subsequent to September 1, 1945 and continuing as of this date account management's refusal to properly apply provisions of the Arbitration Board's award mentioned above.

2. That J. B. Bresnahan, H. E. Rhoades, Norman F. Burns, J. S. McCloskey, Milton A. Schaefer, G. W. Browning, William B. Fish, and Harry W. Bushkemper;

G. W. Browning, O. F. Padrutt, Harry W. Bushkemper, H. A. Voss, H. J. Warren, N. F. Burns, J. B. Bresnahan, C. W. Galliher, H. E. Rhoades, F. J. Kilcoyne, Milton A. Schaefer, William B. Fish, J. P. McCloskey, C. W. Pilant, T. F. Roberts, V. E. Ryther and N. R. Nomensen;

H. C. Kuestemeyer, W. F. O'Toole, L. H. Nance, C. F. Poeschl, M. J. Lambing, C. J. Giest, L. G. Held, M. C. Green, W. J. Bremerick, R. J. Ryan and William Nelson

et al, clerical workers in the Office of Auditor of Freight Receipts, be compensated at the punitive rate of time and one half time additionally for 3½ hours or actual time worked beyond their normal quitting time on Saturday, September 1, 1945 and subsequent Saturdays that such service was performed, as provided for in Overtime Rule 25 of the Current Clerks' Agreement.

EMPLOYES STATEMENT OF FACTS: Below is listed the names of the claimants specifically stipulated in our Statement of Claim, showing their position, classification or title, daily rate of pay, hours of service assignment and the hours normally and ordinarily required to work on Saturday, and the hours constituting their work assignment on other days:

resentatives of the Fifteen Cooperating Railway Labor Organizations of January 17, 1944 and the restrictions contained in the Wage Economic Stabilization Act of October 2, 1942 and executive orders thereunder as interpreted and applied by the Chairman of the National Railway Labor Panel and as understood and interpreted by the various other tribunals in the Northern Pacific and Atlantic Coast Lines cases.

Exhibits not reproduced.

OPINION OF BOARD: This docket presents the question of the correct interpretation and application of Arbitration Board's Award No. 43, Case A-1627, effective September 1, 1945, as interpreted by the Reconvened Board June 28, 1946.

The claimants, clerical employes in office of Auditor of Freight Receipts, claim that they were required to work on certain Saturday afternoons, subsequent to September 1, 1945, in violation of the Saturday Afternoon rule announced by said Award.

By an agreement dated February 3, 1922, the parties to this dispute adopted a Saturday Afternoon rule which provided "that where it has been the practice to allow clerks to be off on Saturday afternoons, this practice will not be rescinded or departed from, except in cases of emergency." The rule also provided that in consideration of time allowed off on Saturday afternoon the carrier would be entitled to an equivalent in hours of overtime.

In 1944 both parties served formal notice of desire to change the rule. Being unable to reach an agreement for such change through negotiation or mediation, the matter was submitted to arbitration which resulted in said Arbitration Award No. 43, which is as follows:

> "Only such employes as are in the judgment of the management, necessary to perform the business of the carrier will be required to work on Saturday afternoons and no deduction shall be made from pay of employes relieved."

The parties being then unable to agree on an interpretation of the Award, the Board was reconvened to consider certain questions propounded by the Employes as follows:

> "Question 1. Does the phrase 'only such employes' contemplate a minimum number of employes that are necessary to perform the business that cannot be deferred until the following week?
>
> Question 2. Does the phrase 'in the judgment of the management necessary to perform the business of the Carrier' permit an arbitrary, capricious and inconsidered opinion as to the necessity 'to form the business of the Carrier' or must it give a considered opinion based upon substantial evidence of the necessity 'to perform the business of the Carrier?'
>
> Question 3. Does the phrase 'necessary to perform the business of the Carrier' contemplate only such business that cannot be reasonably deferred until the following week?
>
> Question 4. Does the failure of the management to comply with the provisions of Saturday afternoon Rule result in the employe or employes affected thereby being entitled to receive additional compensation?"

The Arbitration Board stated that the only answer it could make to Questions 1, 2 and 3 was to state the purpose it had in mind when it awarded said Saturday Afternoon rule, which purpose was stated as follows:

> "(1) To formulate a Saturday afternoon rule which would resolve the dispute between the parties and supersede the then exist-

ing rule. This purpose, in the opinion of the Board then and now, was accomplished by awarding the so-called standard Saturday afternoon rule which is in effect upon many railroads.

(2) Our further purpose in awarding the so-called standard rule was to bring system and order to the practice of giving employes Saturday afternoon off to the end that the practice would extend to such employes except those who 'in the judgment of Management are necessary to perform the business of the Carrier.'"

The Organization insists that the work which was done by the claimants on the Saturday afternoons in question could have been done at a later date; that it was, therefore, not necessary "to perform the business of the Carrier," to do the work on Saturday afternoons; that if the work of these claimants on the Saturday afternoons in question was not actually necessary to perform the business of the Carrier," the fact that "in the judgment of the management" it was necessary, would not avoid its being a violation of the rule to require the work to be done.

If this latter contention were correct the words "in the judgment of the management" would be mere surplusage. In construing a contract we must attempt to give some meaning to all words used. The Arbitration Board used the words advisedly. In their Ruling interpreting the Award the Board said that practical men "recognize too that judgment must rest somewhere as to who will determine what employes or how many in any particular office or department, are necessary to perform the business of the Carrier and it is equally obvious that such discretion and judgment must rest in management."

To prove a violation of this Rule it would be necessary to show that the "judgment of the management" had not been the considered judgment of the responsible officer or representative of management but had been an arbitrary or capricious decision. It is the ordinary rule that when we appeal from a judgment or a decision of a fact finding body or board which has been given the power to make a decision, we must show that the decision is fraudulent, arbitrary, or without a reasonable basis. The appellate tribunal does not disturb a decision where to do so would only be to substitute its judgment for the judgment of the fact finding board.

We see no reason why that same principle should not apply here.

The Organization contends that the fact that claimants here were assigned to Saturday afternoon work for some time in advance shows that the judgment of the management in these cases was not the considered judgment of the responsible officer, but rather the capricious or arbitrary judgment of management. We do not believe this necessarily follows.

The record does show that during the period here in question experienced help was difficult to obtain and that the Carrier in this office, in endeavoring to keep its work up to date and to meet certain dead lines, was requiring a large number of the employes to work overtime regularly.

It is also significant that the manner in which this Rule was being applied by the Carrier was before the Reconvened Arbitration Board, yet that Board said, "It is expected, of course, and **believed by this Board** that the judgment of management will be considered judgment of the responsible officer or supervisor in charge of the office or department * * *."

That statement is not understandable if that Board thought that the practice then being followed by the Carrier was in violation of the Rule.

In the opinion of this Board there is not sufficient evidence in this record to show that the judgment of the management here was arbitrary, unreasonable or capricious and, therefore, an affirmative award is not justified.

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 employe 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 there was no violation of said rule.

AWARD

The claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1947.