Award No. 4315
Docket No. CL-4223

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Scope Rule 4-F-1, and other rules of the Clerks' Rules Agreement, effective May 1, 1942, when it abolished positions of Loader at Camden Freight Station, effective April 7, 1947.

(b) W. J. LaMarra and other employes affected, Camden Freight Station, who are designated by the Brotherhood to participate in this claim, holding positions coming within the provisions of Group 2 of the Scope of the Clerks' Rules Agreement, effective May 1, 1942, be compensated for any monetary loss sustained, beginning April 7, 1947. (Docket E-394.)

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes, between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from to time without quoting in full.

Prior to April 7, 1947, certain of the claimants specified in the Statement of Claim were incumbents of positions designated as Loaders in freight gangs at Camden Freight Station, Camden, New Jersey, and were paid at the rate of $.975 per hour, a differential of two cents over and above the rate paid Truckers. The duties of a Loader, as advertised to the employes of the Atlantic Division, are as follows:

> "Calling names and markings on freight for information of tallymen at time loading on trucks, calling attention to any exceptions such as damage, etc., and loading freight." (See Employes' Exhibit "A".)

On April 4, 1947, a notice was posted on the bulletin board at Camden Freight Station, notifying all platform employes that, effective Monday, April 7, 1947, all Loader positions would be abolished, and that in the future Truckers would load their own trucks, calling out consignees' names and destinations; further, that in the absence of Truckers, the Tallymen would assemble shipments to the greatest extent possible. (See Employes Exhibit "B".)

disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that no violation of the Agreement occurred by reason of the abolishment of the loaders' positions and the Claimants involved are not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employe in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to April 7, 1947, at Camden Freight Station, the gangs handling freight consisted of Truckers, Loaders and Tallymen. On that date Carrier abolished the position of Loader and posted a notice to that effect which also advised that Truckers would load freight on their own trucks, calling consignee's name and destination in order that Tallymen could check freight against waybills and shipping orders or to enter on CT-856 report of over-freight, and that Tallymen in absence of Truckers would assemble shipments to greatest extent possible. The duties of Loaders as described in Carrier's bulletins were "Calling names and markings on freight for information of tallymen at time loading on trucks, calling attention to any exceptions such as damage, etc., and loading freight." The duties of Truckers, on the other hand, were "Trucking freight on two-wheel trucks and loading it correctly from information shown on ballots, and stamping ballots with stamp at cars loaded into." The rate of Truckers was .955 per hour and of Loaders .975. Employes assert that the action of the Carrier was in violation of the following rules of the Agreement between the parties effective May 1, 1942.

> "4-F-1. Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these Rules, nor shall the transfer of rates from one position to another be permitted.
>
> This does not apply in the case of employes paid 'incumbent' rates."

> "3-B-1. (a) Each Operating Division and, except as otherwise agreed, each System General Office Department shall constitute a separate seniority district and separate seniority shall prevail in each such district, by groups, as such groups are defined in the Scope of this Agreement."

Carrier argues that the maintenance of Loader positions in freight gangs is entirely a managerial prerogative and cite Decision No. 103 of the Miscellaneous System Board of Adjustment, dated January 14, 1936, in support of their position.

We think that the Decision of the Miscellaneous System Board of Adjustment is entitled to some weight in our consideration of this controversy. However, we distinguish the instant case therefrom, on the facts, as we distinguish the factual situations present in the instances cited by the Employes where the Carrier allowed their claims under circumstances similar though not analogous to those present herein. In Decision 103, Loader positions had been abolished in 1931. However, in 1935 Loaders were again placed in gangs by agreement between General Chairman and Manager as a trial measure and later removed. The Employes sought the restoration of such positions claiming violation of Schedule Rule 4-G-1 (now 4-F-1) and the Board held the rule was not violated. Thus, it appears that there were not permanently established Loader positions at that time which were discontinued, but merely temporary ones established as an operational trial measure by agree-

ment between Carrier and Employe representatives. Why the positions were abolished in 1931 or what the schedule provision at that time was, does not appear from the record.

Carrier has pointed up the issue herein in its submission as "the only question involved in the instant case is whether the Carrier may discontinue loaders' positions and thereafter require truckers to do their own loading." It is true that Truckers have loaded their own trucks and that in this respect there is an overlapping in the duties of the two positions. There is, however, more than just loading involved. According to Carrier's bulletins advertising these positions, the duties of Loaders were also to call names and markings on freight for information of Tallymen and this phase of the Loaders' duties was also to be performed by Truckers after the abolishment of the Loader positions as appears from the freight agent's instructions of April 4, 1947. Now, there has been a historical differential in the position of Truckers and Loaders for many years recognized as far back as the days of the old U. S. Railroad Labor Board. The difference as measured by the differential in pay is small, but the somewhat greater intelligence, required in the Loader position, doubtless, accounts for the silghtly higher rate of pay. What the Carrier has done in this situation is to remove that small reward for the exercise of a little more initiative and skill by taking a historically recognized factor justifying a higher rate of pay for the Loader position and transferring it to the Trucker position. In other words, it has, in fact, though not in name, created a new position, a combination of Trucker-Loader at the lower rate of pay. We think this a violation of Rule 4-F-1 (See Award 220).

We recognize that the determination of whether or not Loaders should be retained on freight gangs is a managerial prerogative. However, when such positions are abolished, it must be done in accordance with the requirements of the collective bargaining Agreement. How the Carrier removes the violation of the Agreement is a matter for its own determination. We do not direct nor have we the power to direct that Loaders be placed in freight gangs. We do believe, however, that an affirmative award is required and hence the claim will be sustained. In other similar situations now pending on the property and in the removal of the violation, we trust that the parties can negotiate out a reasonable solution.

Having determined that there was a violation of Rule 4-F-1 in this instance, there is no need to go into the question of the alleged violation of 3-B-1.

FINDINGS: The Third Diviison 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1949.