

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**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

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

- (1) That the carrier violated, and continues to violate, the Clerks' Agreement when it blanked the only position of trucker Group (3) at Colorado Springs, Colorado, and assigned the duties of that position to employees in Group 1, and
- (2) That the occupant of the position of trucker at Colorado Springs, Mr. Dale R. Liljerstrom, be compensated the difference between what he was paid and eight hours for each working day he was laid off at the expiration of four hours, or prevented from performing any service subsequent to January 1, 1947.

EMPLOYEES' STATEMENT OF FACTS: Mr. Dale R. Liljerstrom entered the service of the Denver & Rio Grande Western Railroad Company as trucker on July 3, 1945, and was assigned position of trucker at Colorado Springs Freight Station and up until the latter part of 1946 was worked and paid eight hours for each working day. Some time subsequent to January 1, 1947, the carrier instituted the practice of laying Mr. Liljerstrom off at the expiration of four hours and assigning what freight handling there was to clerks.

The organization protested this practice in August 1947 and progressed claim to the court of last resort, without settlement being reached. The carrier refused to enter into joint submission of this dispute; therefore, it is being presented ex parte.

POSITION OF EMPLOYEES: Employees' position is based on Rule 1 (Scope Rule), paragraphs (a) and (b) of Rule 3 and Rule 31.

Rule 1 provides:

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

Group 1. CLERKS.

(a) Clerical workers.

We conclude that the dispute is now properly before the Board for decision; and that the evidence is sufficient to make a final disposition of it. Exhibit 'A' attached to claimant's ex parte submission contains a detailed statement showing the days worked by each claimant. It was established by Award No. 1211 that each claimant who worked 'with substantial regularity' during the period covered by the claim should be paid a minimum of eight hours for each day worked. Negotiating the dispute on the property the parties agreed that three days' work or more per week constituted 'substantial regularity.' We adopt that standard in disposing of the claim."

and the Award reads:

"Where it appears from claimant's Exhibit 'A' that any claimant worked on three or more days a week, during the period covered by the claims, such claimant shall be paid a minimum of eight hours for each of such days."

The settlement proposed was made following check of Mr. Liljerstrom's services for the period June 1st to and including December 31, 1947. On dates Mr. Liljerstrom only worked four hours in a week in which he performed service on three days or more, the settlement contemplated payment of eight hours for such dates, or an additional four hours over the four hours already paid.

Mr. Liljerstrom performed service as a trucker in the period Jan. 1st to June 30th, 1948, inclusive, as follows:

1948	Eight Hour Days	Four Hour Days	Total
Jan.	2	2	4
Feb.	9	5	14
March	13	2	15
April	8	2	10
May	3	0	3
June	5	0	5
	<hr/> 40	<hr/> 11	<hr/> 51

In the above period there were 153 working days. In other words, Mr. Liljerstrom only worked 51 days (11 of which were part time days) or one third of the working days in the six months period, which is ample evidence that a full time trucker position is not justified.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Dale R. Liljerstrom, was assigned as a trucker at Colorado Springs, Colorado, with Group 2 seniority date of July 3, 1945. On January 1, 1947, the Carrier instituted the practice of laying Claimant off at the end of four hours' service daily and assigning the trucking of freight remaining to Clerks regularly assigned to Group 1 positions. The Organization contends that this practice is violative of the Agreement. The rules applicable to the situation are:

"(a) Seniority rights of employees to vacancies or new positions will be governed by these rules. Seniority is restricted to the three groups designated in Rule 1 of this Agreement as follows:

Group 1 shall constitute one seniority class

Groups 2 and 3 combined shall constitute one seniority class

(b) Seniority in Group 1 begins at the time an employee is first assigned to a position in accordance with Rule 10, in the seniority district where assigned. Seniority in Groups 2 and 3 begins at the time pay starts, in the seniority district where initial service is performed.

(e) Employees advanced from one seniority group to another in the same seniority district will retain and continue to accumulate seniority on the roster from which promoted. Employees who have been promoted from seniority Groups 2 and 3 to seniority Group 1 must first exhaust their seniority on Group 1 positions, for which they may be qualified, in event they are disturbed from their regularly assigned position. Having thus exhausted their Group 1 seniority, they may, within five (5) calendar days, resume date and exercise seniority in displacing employees of seniority Groups 2 and 3. In order to retain their seniority date in Group 1, employees who have reverted to seniority Groups 2 and 3 must protect Group 1 vacancies or new positions, for which they may be qualified, immediately when available and bid for and accept such vacancies or new positions, except as provided in Paragraph (f)."

Art. III, Rule 3 (a), (b), (e), current Agreement.

Similar disputes have been before this Division and a clear interpretation of the meaning of the foregoing rules does not appear to have resulted. That difficulties lie in the way of harmonizing the various rules, and various clauses within some of the rules themselves, is apparent on their face.

It is clear to us that the only seniority district here involved is the "Colorado Springs station and yard forces." See Art. III, Rule 5, current Agreement. This assertion is also borne out by the language used in Art. III, Rule 3 (e), wherein it is stated the "Employees advanced from one seniority group to another in the same seniority district will," etc.

It is evident from a careful reading of Rule 3 (e), hereinbefore quoted, that Group 1 and Groups 2 and 3 employees were not to be used whimsically and interchangeably in performing the work of the other group or groups. It is true that seniority attaches to the individual employee and that positions include the performance of the work of the position. But when seniority entitles an employee to occupy a position, he is entitled by the very nature of things to perform the work of that position. A trucker is a Group 3 employee, and we think the Agreement contemplates that if there is available work for the establishment of a trucker position, an employee holding seniority in Groups 2 and 3 seniority class is entitled to the position and to perform the work thereof. On the other hand, if there is insufficient work for the establishment of a trucker position or if there is additional extra work not sufficient to require a second trucker position, we think the Agreement permits Group 1 employees to perform it.

This, of course, raises the question: When does work exist which requires the establishment of a position? This question was answered in Award 1211 wherein it was stated that it applied to a position worked "with substantial regularity." But the answer proved just as indefinite and ambiguous as the situation previously existing until this Board in Award 2161, more or less arbitrarily, defined "substantial regularity" as "three days' work or more per week." Until the parties produce a better definition by agreement, we shall continue to apply that standard.

The record shows that trucking work in excess of three days per week existed at Colorado Springs. It in fact shows that more than six days trucking work existed there. The position of trucker occupied by Liljerstrom under Group 3 should, therefore, have been retained.

If this was not so, no effect would be given to that part of Rule 3 (e) providing: "Employees who have been promoted from seniority Groups 2 and 3 to seniority Group 1 must first exhaust their seniority on Group 1 positions, for which they may be qualified, in event they are disturbed from their regularly assigned position. Having thus exhausted their Group 1 seniority, they may, within five (5) calendar days, resume date and exercise seniority in displacing employees of seniority Groups 2 and 3." Clearly, a Group 3 employee can be deprived of his position where the work of the position exists only in the manner stated in the foregoing rule; that is, by proper

exercise of seniority rights. If Group 1 employes could be assigned indiscriminately to perform the work of the Group 3 position as the Carrier saw fit, much of the rule would be meaningless, a situation to be avoided if possible in contract interpretation.

The claim of the Organization is sustained under the facts here shown, subject to the provisions of Rule 25, current Agreement, effective June 1, 1941.

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 Agreement was violated.

AWARD

Claim (1) sustained. Claim (2) sustained from June 1, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.