

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: 1. The Carrier violated the rules of the Agreement when, during the period of February 4th to March 5, 1948, both dates inclusive, the Carrier transferred positions and work in connection with the total of two hundred and thirty-five (235) loaded cars from Wayne Junction Transfer, Philadelphia, Pennsylvania to Willow and Noble Streets, Philadelphia, Pennsylvania, and fifteen (15) loaded cars to Reading Transfer, Reading, Pennsylvania.

2. That all employees at Wayne Junction Transfer be compensated at their prevailing rates for one hour's punitive overtime for each working day between the dates of February 4th and March 5, 1948, both dates inclusive, by reason of the Carrier's action.

EMPLOYEES' STATEMENT OF FACTS: On January 20, 1948 the Carrier abolished the thirteenth regularly assigned gang at Wayne Junction Transfer. The cars awaiting transfer at Wayne Junction Transfer began to accumulate with the result that, by February 3, 1948, two hundred (200) loaded cars had accumulated, which resulted in the Carrier's resorting to transfer of cars to other points, and during the period between February 4th to March 5, 1948, both dates inclusive, the Carrier transferred Two hundred and thirty-five (235) loaded cars to Willow and Noble Streets Freight Station, Philadelphia, and fifteen (15) others to Reading Transfer, Reading, Pennsylvania. Claims for violations of rules were progressed through procedures on the property to the highest officer of appeal and were denied under date of August 10, 1948.

POSITION OF EMPLOYEES: In support of our Position, we desire to quote Rules 24, 26, 27 and 37:

"RULE 24—SENIORITY DISTRICTS

(a) Seniority rosters in effect prior to April 1, 1937, will be continued. Employees shown on such rosters will hold prior rights to positions covered by same. No additional names will be added thereto.

(b) Effective January 1, 1938, Division or Departmental seniority districts were established to include employees in agreed upon territories as noted below. Employees on Division or Departmental rosters

tion with the diversion of cars from Wayne Junction Transfer during the period in question.

Part 2 of the claim appears to be one for money payments pursuant to Rule 44, which provides that claims for money payments alleged to be due arising from any cause may be made only by the employee or a representative on his behalf and must be presented in writing to the employee's immediate superior. This part of the claim is general and indefinite, no individual names or the number of employees involved are mentioned, which in the Carrier's opinion is contemplated by Rule 44 and should be developed and stated when claims are submitted. Furthermore, claim is made for one hour's punitive overtime for each working day between the dates of February 4th through March 5th, 1948, while it will be noted that cars were only diverted on sixteen days during this period.

Under the facts and circumstances presented in the foregoing and in view of the past practice, the Carrier submits that the diversion of cars from Wayne Junction to Willow & Noble Streets was no different than forwarding the cars direct to Willow & Noble Streets or other freight depots for handling. Further, the Carrier maintains the diversion and handling of less-than-carload freight at points other than Wayne Junction Transfer was permissible and proper and not in violation of any rules of the effective Agreement. The claim is not supported by the rules of the agreement or the past practice and is, therefore, without basis or merit and Carrier requests the Board to so find and deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in substantial dispute and are briefly, that between February 4 and March 5, 1948 two hundred and thirty-five loaded cars destined to Wayne Junction, Philadelphia, Pa. were transferred to other seniority districts, namely—two hundred and twenty cars to Willow and Noble Streets, Philadelphia, Pa. and fifteen cars to Reading Transfer, Reading, Pa. The cars were unloaded there by employees under the same Agreement as Claimants but of another seniority district. The Employees maintain that the transfer of this work out of their seniority district and into another was in violation of Rules 7(c), 24, 26, 27 and 37 of the Agreement.

The Carrier agrees that Rule 24 provides for employees' rights according to established seniority districts and rosters, and that it entitles employees therein and thereon to the positions of their assignments, and the work which comes to those positions. The Carrier contends that the cars in question were not set up or placed for handling at Wayne Junction, and it was never intended they be worked there.

The controlling question for this Board to decide is whether the cars in question were assigned to and became work to be performed by the employees in the Wayne Junction seniority district. The undisputed facts are that these cars were destined for Wayne Junction, and were not diverted elsewhere en-route. They were placed in the Wayne Junction yard and the waybills were in the territory office; and when the Carrier determined the employees could not handle this backlog as quickly as was desired, during their regular hours, the cars were transferred to Willow and Noble Streets and Reading Transfer, for handling. The transfer was not agreed upon by the Claimants. The Carrier contends that since the cars were not set up for handling, even though they were in the yard and waybills in the office, the Claimants had no prior right to the work of transferring the freight in said cars. We cannot agree in this contention any more than we could agree that a clerk working at a desk in an office had only the prior right to perform work on his desk, but such right did not apply to work in a file cabinet in the office. It is of interest to note that the Carrier, in a companion case, Award 4666, used the number of cars in the yard awaiting setup for handling, to determine how many gangs would be worked at Wayne Junction. It must follow that in the Opinion of the Board the Carrier violated the Agreement when it transferred the cars in question. This Board has consistently held that positions or work within a specific seniority district must be reserved for employees holding seniority rights therein. See Awards Nos. 1808, 2050, 2988, 4534 and others, even though such work must be performed on overtime.

In paragraph two of this claim the Employees seek compensation for one hour's overtime rate for each working day between the dates in question. The record shows that cars were transferred on only sixteen days during the time between February 4 and March 5, 1948, hence the Agreement could not have been violated except on those 16 days. We must agree with and follow the Awards of this Board which have consistently held that penalty Awards shall be at pro rata rate. It follows that since the Carrier violated the Agreement on only sixteen days during the period in question, that the Claimants shall each be allowed sixteen hours at the pro rata rate.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of December, 1949.

DISSENT TO AWARD NO. 4667, DOCKET CL-4689

The Opinion of Board is based on the theory that because the cars involved, and the waybills, had arrived at the point of destination, though the cars had not been placed at the transfer station there for handling of the freight by claimants, the movement of the cars to a station in another seniority district for transfer handling of the freight was in violation of the Agreement.

While the Agreement provides for separate seniority districts it contains no provision restricting the movement of cars as may be found necessary in the efficient operation of business.

This Board has no authority to make or alter Agreements and it likewise has no authority through an Award to impose restrictions on methods of operation or conduct of the business of a Carrier.

/s/ C. C. Cook
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ A. H. Jones
/s/ R. H. Allison