Award No. 4810
Docket No. CL-4749

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment that the Carrier violated the Clerks' Agreement:

1. When on February 3, 1948, it posted a bulletin abolishing eleven positions classified as loaders at the Portland Freight Station, and on the same bulletin, advertised eleven positions of truckers at a lower rate of pay, with relatively the same duties assigned as had been performed by the loaders.

2. That, the Carrier be required to reinstate the eleven positions of loader, and compensate the former incumbents for all monetary loss suffered from February 7, 1948, until the positions are restored, the difference in rates of pay being loader $1.11 per hour plus the National Wage Increase of 7 cents per hour from October 1, 1948, and $1.09 per hour plus the National Wage Increase of 7 cents per hour from October 1, 1948.

EMPLOYES' STATEMENT OF FACTS: Under date of February 3, 1948, the Division Superintendent posted Bulletin No. S-21, abolishing eleven positions of Loaders, effective at close of shift February 7, 1948, and on the same bulletin advertised eleven positions of Truckers in lieu thereof, copy of Bulletin S-21 is attached as Exhibit "A".

Under date of February 22, 1948, the Division Chairman wrote the Superintendent protesting the abolishment of the positions of Loaders and the establishment of positions of Truckers at a lesser rate of pay, with approximately the same duties as had been assigned to the Loaders, and requested the reinstatement of the Loader's position. Attached is a copy of Division Chairman's letter as Exhibit "B".

The Superintendent did not reply to the Division Chairman until April 7, 1948, and in his reply it is admitted that the truckers are required to perform approximately the same work as they formerly performed as loaders, copy of reply is attached as Exhibit "C".

The Division Chairman again wrote the Superintendent under date of April 18, 1948, copy of letter is attached as Exhibit "D", and under date of April 22, 1948 the Superintendent again declined the request for re-establishment of the positions of loaders and compensation for monetary loss. Copy of the Superintendent's letter is attached as Exhibit "E".

Under date of May 12, 1948, appeal was made to the Assistant to the General Manager, who is the highest ranking officer in the District to which

The Carrier's position concerning the propriety of Trucker positions handling freight onto a four-wheeled truck was clearly set forth in Superintendent McAllister's letter dated April 7, 1948, Carrier's Exhibit F. The Employes' representative took no exception to this statement.

With regard to the Employes' assertion that stowing work was being performed by the Truckers "during the rush hour", the Carrier pointed out (Carrier's Exhibit F) that, when any of these men assisted in the stowing of cars, they were to be paid for such work in accordance with Rule 25. Rule 25 of the agreement permits employes to perform higher rated work when not in excess of one hour, and the Employes' Organization do not assert that the Truckers were performing this work in excess of one hour per day. This was all carefully explained to the Employes' Division Chairman Eoff (Carrier's Exhibit F) and he took no exception. Nor is it denied that the Truckers are paid the higher rate, in accordance with Rule 25, when they perform the higher rated work.

On April 18, Division Chairman Eoff asserted that Rule 26 of the agreement was violated. Rule 26 was not violated, because the positions of Loaders were discontinued and positions of Truckers established and the Truckers' work was restricted entirely to trucker duties. With the abolishment of the Loaders' positions and the establishment of the Truckers' positions, the requirement that these men could be used on either class of work was eliminated. (Carrier's Exhibit H.)

As shown, all of the freight handling positions at the Portland freight station were classified as Loaders during the wartime period, so that the Carrier might utilize at all times the services of all such employes on the higher rated work. Many, if not all, of these employes continued to perform the lower rated work of Trucker, during this period of time. This does not have the effect, however, of converting the lower rated Trucker work into Loader work, nor does it result in requiring the Carrier to pay the higher rate when only the lower rated work is performed. Neither did it operate to abolish the classification of Trucker.

CONCLUSION

The Carrier has shown that Rule 26 of the agreement has not been violated. The Carrier's handling of the situation, as set forth in the foregoing, has been in conformity with the provisions of the controlling agreement.

The claim is without merit and the Carrier respectfully requests the Third Division, National Railroad Adjustment Board, to deny the claim.

The Carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the Organization in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Organization in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

(Exhibits not reproduced).

OPINION OF BOARD: By bulletin dated February 3, 1948, Carrier abolished eleven positions of loaders, rated at $1.11 per hour, at its Portland (Oregon) Freight Station, and simultaneously established eleven positions of truckers, rated at $1.09 per hour, concurrently effective as of Feb. 7, 1948.

The record definitely establishes that the occupants of the trucker positions referred to above perform substantially the same work as was previously performed by the complaining loaders. This is admitted by the Carrier, thereby relieving us of the burden of reconciling conflicting evidence to determine the similarity or dissimilarity of the work connected with the two groups of positions.

To justify its action the Carrier says that as a matter of expediency, due to the shortage of labor during World War II, it classified all of its freight handlers at Portland as loaders; but that as the volume of freight diminished

after the cessation of hostilities, the necessity of having these employes classified as loaders no longer existed. It is also asserted on behalf of the Carrier that prior to World War II there was a clear distinction between the duties of loaders and truckers, which justified their rate differential, and that prior to the bulletin of February 3, 1948, the loaders here involved had refused to perform loaders' functions.

Rule 26 provides:

> "Where the work and responsibility of a position are increased or reduced to the extent that it compares with other existing positions of different rates of pay in the same division of the Operating Department and the same seniority district of other departments, adjustment will be considered as soon as practicable by the ranking officer and General Chairman, and rate will be adjusted in accordance with Rule 24, effective as of the first day of the month in which agreement is reached, **but established positions will not be discontinued and new positions created under different titles covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these rules.**" (Emphasis added)

There is no contention that Carrier attempted to comply with the first part of the Rule quoted, and the latter part therefore governs.

Conceding all that the Carrier asserts, we are of the opinion that its conduct in the premises was in violation of the Agreement. Having, over a considerable period of time voluntarily classified the work performed by the Claimants as loaders' work, the Carrier is in no position at this late hour to say, as a matter of right, that such work should be classified as belonging to the truckers. This is precisely what Rule 26 is designed to prevent.

If, prior to February 3, 1948, the loaders, or some of them, were insubordinate, they might have been disciplined in accordance with the remedy provided for in the current Agreement. This circumstance, if it existed, did not justify unilateral conduct on the part of the Carrier, calculated to modify the contractual relationship of the parties to the Agreement.

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 Carrier violated the Agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.