

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of the Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the carrier violated the Clerks' Agreement when:

1. On January 8, 1949, it required regular assigned employees making up the first three gangs at Louisiana Street Freight House, Buffalo, New York, to cease work prior to the completion of their eight (8) hour tour of duty and failed and refused to pay such employees for the remainder of their assignment at the established hourly rate of their positions, and,

2. That carrier shall now be required to reimburse each employee so affected January 8, 1949, for the actual time required to cease work before completion of their assignment at the established rate of the position worked that day and to similarly reimburse employees for any subsequent dates when the agreement was violated in like manner.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 8, 1949, Roster "B" employees at Louisiana Street Station were assigned to work eight (8) hours per day and were worked the full number of hours of their assignments. They were paid at the tonnage rate for the hours worked on tonnage and at the established hourly rate for the remaining hours of their assignment.

Rule 23 of the Agreement effective December 1, 1943, amended July 1, 1945 is quoted in full in 'Position of Employees' and in compliance therewith, Mr. P. C. Berkwater, Agent at Louisiana Street Freight Station, Buffalo, New York, under date of January 1, 1949, posted the following notice designating the regular assigned force for the month of January, February and March, 1949:

ERIE RAILROAD COMPANY

Buffalo Louisiana St., N.Y.
January 1, 1949.

In accordance with agreement governing clerks and other station employees, following is assignment at Buffalo Louisiana St. Freight House for the months of January, February, and March, 1949.

Name
L. Wagner
G. M. Schaefer

Title
Chief Dely. Clerk
Assistant Foreman

To grant the claim of the Organization in this case would require the Board to 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 the dispute.

The Carrier asserts that this claim is without merit and under the applicable agreement, the claimants are not entitled to the compensation which they claim for the following reasons.

1. There has been no violation of any negotiated rule (See Award No. 1570).
2. Rule 23(d) is a guarantee extending to employees working on a tonnage or piece work basis. This rule contemplates that there may not at times be sufficient tonnage work available to enable the employees so engaged to earn the established daily rate. Thus the rule protects them against wage loss.
3. The claimants were paid the tonnage or piece work rate for the actual tonnage handled plus additional time at hourly rate, and in no case were they paid less than they would have earned for each eight or four hour tour of duty at their hourly or daily rate.
4. Third Division Award 1570 and Interpretation No. 1 thereto fully decided an identical dispute between this same Organization and Carrier under the same rule now cited by the Organization.

The Carrier submits that the claim is without merit and should be denied in its entirety.

OPINION OF BOARD: The System Committee makes this claim in behalf of the employees making up the first three gangs at the Louisiana Street Freight House of Carrier at Buffalo, New York, who were required to cease work on January 8, 1949 before they had completed their eight hour tour of duty and then refused pay for the remainder of their assignment at the established hourly rate of their respective assignments.

It asks that all employees so affected on January 8, 1949 be paid for the actual time they were required to cease work before their regular eight hour assignment would have been completed at the established hourly rate of the positions they were then working. It also makes the same claim for all employees similarly treated on subsequent days.

The positions on these three gangs were regular Roster "B" platform positions established under and pursuant to the provisions of Rule 23 (a) 3 and filled accordingly to Rule 23 (b). Admittedly the thing here complained of happened on January 8, 1949 and January 29, 1949. Whether it happened on days subsequent thereto is not shown by the record although apparently it did.

Rule 23 (a) 3, as far as here material, provides: "Divide the total man-hours paid for at each operating unit during the same quarter of the preceding year by 1224, to arrive at the number of regularly established eight (8) hour positions to be worked during the current quarter of the number of days per week as provided in Rule 28, * * *."

Rule 28, as far as here material, provides: "Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employees below six (6) per week, * * *."

Under these rules, when Roster "B" platform positions are regularly established pursuant to Rule 23 (a) 3, they must be worked during the quarter for which established for eight hours per day six days per week. While these are exceptions to the foregoing they are not here material.

Carrier contends it had the right to do what it did by reason of Rule 23 (d). This rule is as follows: "Employees paid on a tonnage or piece work basis will be paid for the actual tonnage or piece work on a daily basis, but in no case less than they would have earned per each eight (8) or four (4) hour tour of duty at their hourly, daily or monthly rate."

This is a guarantee rule. It provides that employees engaged in tonnage or piece work shall never be paid less than their hourly, daily or monthly rate of pay for any four or eight hour tour of duty no matter what the circumstances may be which prevents them from earning that amount if paid on a tonnage or piece work basis. It is a minimum guarantee of pay for any four or eight hour tour of duty while engaged in tonnage or piece work. It has nothing to do with fixing the hours of an assignment or the right to reduce them.

We find nothing in the Agreement that permits Carrier to reduce the hours of a Roster "B" platform position, established pursuant to Rule 23 (a) 3, below eight hours per day. In doing so Carrier violated the provisions of its Agreement with the Brotherhood.

Carrier objects to the claim here made on the ground that it is now in the form of a general or blanket claim whereas the claim handled on the property, up to and including the chief operating officer, was for certain named individuals on specified dates.

This Division has often held, and properly so, that a correct procedure in handling disputes is to permit the filing of general claims when the question at issue operates uniformly upon a class of employees that is readily determinable and for the continued violation thereof, if such be a fact. This prevents a multiplicity of claims and permits the Board to settle the fundamental questions involved. See Awards 3687, 4821 and 5078 of this Division.

Such would be permissible here if the claim had been so made on the property because we can consider here the dispute upon which the parties have failed to reach an agreement on the property, when handled there in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes, if they are properly referred to us by petition with a full statement of the facts and all supporting data bearing thereon. See Section 3, First (i) of the Railway Labor Act.

The claim or dispute handled on the property, up to and including the chief operating officer of the Carrier designated to handle such disputes, was in behalf of ten named employees for the dates of January 8, 1949, January 29, 1949 and all days subsequent thereto when they were dismissed before the expiration of eight hours' work. In view of the foregoing, we think the claim here must be limited to the named employees, who are: Philip Fox, checker; B. Bulas, caller; H. Symanski, trucker; J. Emanuel, trucker; F. Petrelli, checker; J. Sebadasz, caller; F. Francesconi, trucker; L. Sikorski, trucker; P. Zuffoletto, checker; and H. Symanski, caller. It will be observed that the name of H. Symanski appears twice, once as a trucker and once as a caller. It is not shown whether this happens to be two individuals with the same name or the same individual who worked on two classifications. Whatever the situation may be, payment should be made in accordance herewith to the named individuals when violations occurred.

The claim is therefore allowed for the named individuals on January 8, 1949, January 29, 1949 and on all days subsequent thereto when they were dismissed before the expiration of eight hours of work. They should be paid for the actual time they were required to cease work before the completion of their assignment at the established hourly rate of their positions.

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 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

Carrier violated the Agreement.

AWARD

Claim allowed for the individuals who are set out in the Opinion on the dates and to the extent as therein set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of November, 1950.