Award No. 5413

Docket No. CL-5423

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violates the rules of the Clerks' Agreement at Jersey City, N. J. when on September 19, 1949 and on subsequent dates the carrier arbitrarily assigned Roster A work to Roster B employes, and,

That carrier shall now reimburse Mr. J. L. Clancy, K. Bolz, J. Kiernan, T. Haggerty, and D. Kirwan for a call on each day that the Roster B employes were required to perform Roster A work during the period September 19, 1949 to November 26, 1949 (File 928).

EMPLOYES' STATEMENT OF FACTS: At Jersey City, N. J. carrier maintains six (6) regularly assigned positions of "Ice Inspectors" working on three shifts, their duties require them to have a knowledge of perishable freight protective Tariffs, to inspect the condition of ice in bunkers of refrigerator cars, to inspect and adjust when necessary the plugs and vents of refrigerator cars, to weigh cars and make all required reports in connection with these duties.

Attached hereto as employes' Exhibit A is bulletin advertising vacancy on "Ice Inspector" position. Where "Location" is shown as "Jersey City" the area covered by the assignment requires the incumbent of position to protect perishable freight shipments in a large area comprised by North and South Yards, Monmouth Street Yard and Team Tracks, Jersey City, also Piers and sidings.

Under normal conditions the force of Ice Inspectors is able to handle the usual flow of perishable traffic, however, commencing early in September and closing late in November of each year Carrier receives in the Jersey City yards in the neighborhood of 2000 cars of table and juice grapes the majority of which are handled in Monmouth St. Yard.

In former years Seasonable positions of Ice Inspectors have been put on to handle this business and when such positions have not been established during the "grape season" the additional work has been done by Ice Inspectors on an overtime basis.

On or about the date of this claim (Sept. 19, 1949) the receipts of grapes had reached approximately 1100 cars and the Ice Inspectors on duty were

It is noted that in Employes' Statement of Claim that no specific Rule violation is alleged. The Carrier protests this procedure and reserves to itself the right to answer at a later date any and all charges that may be made by the Employes. The absence of a specific charge is not in harmony with the pronouncement made in Award 5077 wherein it was held:

> "If possible, however, the Board should retain jurisdiction of the dispute separate and apart from the compensation aspects of the claim. This Board does not concern itself with technicalities nor is there any disposition to hold the parties to exacting form in the presentation of claims. However, something more must be demanded of the claim than a bald statement that an Agreement has been violated. The claim should put in issue the precise rules involved in the alleged violation and claimant's theory of the claimed violation. Those allegations should remain constant throughout all stages of the proceedings and any variance therein can be fatal to the Board's jurisdiction."

Based on the foregoing quotation from Award 5077 this claim has not been properly progressed to the National Railroad Adjustment Board and should be dismissed with the authority so given.

It is further noted that the Employes request "That carrier shall now reimburse Mr. J. L. Clancy, K. Bolz, J. Kiernan, T. Haggerty and D. Kirwan for a call on each day * * *." The Carrier has shown that the work complained of amounts to approximately one hour each day. Assuming, but not admitting, that the Roster "B" employe is not entitled to do the work as a part of his daily assignment, at best there would only be one call and probably not any. To request five calls is beyond all reasoning.

The Carrier has established that under the applicable Agreement the claim is without merit and should be denied because:

1. Carrier has not violated any provision of the applicable Agreement.

2. No work has been removed from the scope of the Clerks' Agreement. All of the employes involved are within scope of the same Agreement and are in the same seniority district.

3. There is nothing in the Agreement allocating any work to be performed exclusively by any class of employes coming thereunder.

4. The very construction of the entire Agreement either clearly spells out in some rules that work under the Agreement may properly be performed by all groups without exception, or distinctly contemplates such performance in other rules. See Rules 1(g), 3(f), 1(c), 1(c)1 and 1(f).

5. Award 4071 hereinbefore cited and parts thereof quoted.

(Exhibits not reproduced.)

OPINION OF BOARD: At the New York Terminal, Jersey City, N. J. Carrier maintains six regularly assigned "Ice Inspector" positions, working on three shifts. Incumbents of the positions are required to have a knowledge of perishable freight protective tariffs, to inspect the condition of ice in bunkers of refrigerators cars, to inspect and adjust when necessary the plugs and vents of refrigerator cars, to weigh cars and make all required reports in connection with these duties. Their assignments cover a territory which includes what is hereinafter referred to as the Jersey City and Monmouth Street Yards.

Rule 4 of the current Agreement subdivides territorial seniority districts into division rosters and it is conceded that in the district and division here involved icing inspectors are Roster "A" employes and checkers are Roster "B" employes.

Claimant bases its right to a sustaining award on the premise the record discloses that from September 19, 1949 to November 26, 1949, inclusive, the Carrier assigned Roster "A" work to Roster "B" employes and thus deprived the individuals named in the claim of a call for each day Roster "B" employes were required to perform Roster "A" work.

The record reveals the employes for whom the claim is made held regularly assigned positions as icing inspectors, that there were no extra, unassigned or furloughed Roster "A" employes available to perform the work in question and that the Carrier assigned checkers, Roster "B" employes, to perform it.

With what has been heretofore stated, although there is some quibbling between the parties with respect thereto, all the essential facts and issues involved in the instant dispute can be gleaned and clearly appear from a letter written to the claimants' authorized representative by the Carrier's Superintendent which is a part of the record. In that communication, wherein he denied the claim, the following statement appears:

> "During the grape season, the work of Ice Inspectors employed in the Jersey City Yard from 8 A. M. to 4:00 P. M. was heavier than it is at other seasons of the year and in order to assist this man, we had a Roster 'B' employe take the position of the vents and plugs of refrigerator cars loaded with grapes handled in Monmouth Street Yard which took from 30 minutes not to exceed two (2) hours per day.
>
> I know of no rule or agreed upon understanding which requires that we have a Roster A employe perform this small amount of work when we have a Roster B man available. Both of these classes of employes come in under the same agreement."

Thus it appears the sole question we are called upon to determine is whether the Agreement required the Carrier to call the incumbents of the Roster "A" positions of icing inspectors to perform the work described in the foregoing letter.

This Board has held numerous times that in the absence of rules in agreements clearly to the contrary seniority rosters by districts prevent carriers from turning the work of those on one district seniority roster over to those of another even if the employes concerned are covered by the same agreement (see Awards 1808, 2354, 3656, 4076, and others cited therein). In other awards to which we adhere, it has held the rule is equally applicable to cases where—as here—group rosters were involved (see e. g., Awards 2585, 3582 and 5091).

We have little difficulty in concluding the work described in the letter of the Carrier's Superintendent was Group "A" work belonging to icing inspectors and our extended search of the record fails to reveal any rule in the current Agreement warranting the Carrier in taking that work from such employes and assigning Group "B" employes (checkers) to perform it. Therefore, since as we have indicated the Carrier had provided no relief positions and there were no extra, furloughed or unassigned Roster "A" employes available, the regularly assigned incumbents of the icing inspectors positions should have been called instead of the Roster "B" employes and the failure to so call them resulted in a violation of Rule 20 (e) of the Agreement providing that regularly assigned employes will be given preference when overtime is necessary on their positions.

To forestall the result just announced the Carrier points to Rules 1(c), 1(c)1 and 1(c)f., also to Rule 3(f), and insist they show an intent to permit the assigning of work from one group and roster to the other group and roster, and therefore compel a conclusion the general rule prohibiting the interchanging and transferring of work from one group and roster to an-

other has no application. We cannot agree. The first three rules mentioned have reference to the assignment of work after abolishment of a position. The most that can be said for the fourth is that under certain conditions and circumstances, not here material, employes may acquire seniority rights on either roster without losing rights acquired on the other.

Most of the decisions relied on by the Carrier and which have been given careful consideration deal with situations where the work in question was of such character it could be said to be work belonging to two crafts or falling within the scope of two groups and rosters where but one craft was involved. That, as we have seen, is not the situation here. Hence most of such decisions are of no value as precedents. If carefully examined Award 4071 on which Carrier places great weight will be found to possess many distinguishing features. The factual situation was entirely different and the work involved was Sunday work on a position which, so far as that day was concerned, had been abolished.

In conclusion it should be pointed out the fact we have decided the Carrier violated the Agreement in assigning the work in question to Group "B" employes does not mean that each individual named in the claim is entitled to a call for each day the Roster "B" employes were allowed to perform Roster "A" work. One call for one employe on each day involved is all that petitioner is entitled to recover.

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 sustained but to the extent indicated in the concluding paragraph of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1951.