Award No. 5438
Docket No. CL-5469

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

NORTHERN PACIFIC RAILWAY COMPANY

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

STATEMENT OF CLAIM: Claim as presented by the System Committee of the Brotherhood in behalf of store helpers at Northtown (Minneapolis) that they be paid at time and one-half rate from 4:00 A. M. to 5:00 A. M. retroactive to September 1, 1949, based on Rule 43 of the Clerks' Agreement effective June 1, 1946.

CARRIER'S STATEMENT OF FACTS: Prior to September 1, 1949, there were three positions of store helper maintained at Northtown, which positions were assigned to work as follows:

One store helper—7:30 A. M. to 4:00 P. M. Monday through Saturday

One store helper—4:00 P. M. to 12 Midnight Monday through Saturday

One store helper—12 Midnight to 8:00 A. M. Monday through Saturday

Sunday was the assigned rest day of each of these three positions and none of these positions was filled on such day.

Effective September 1, 1949, the position of store helper assigned to work from 12 Midnight to 8:00 A. M. was abolished and the hours of assignment of the position of store helper assigned to work from 7:30 A. M. to 4:00 P. M. and the position of store helper assigned to work from 4:00 P. M. to 12 Midnight were changed as follows:

One store helper 8:30 A. M. to 5:30 P. M. Monday through Friday

One store helper 7:00 P. M. to 4:00 A. M. Thursday through Monday

The position of store helper assigned to work from 8:30 A. M. to 5:30 P. M. effective September 1, 1949, is not filled on rest days, but the position of store helper assigned to work from 7:00 P. M. to 4:00 A. M. effective September 1, 1949, is filled on rest days by the occupant of a relief assignment.

M. E. Dale occupies the position of store helper that was assigned to work from 4:00 P. M. to 12 Midnight prior to September 1, 1949, and that was assigned to work from 7:00 P. M. to 4:00 A. M. effective September 1, 1949.

tained, it would be permissible for Management to assign a Night Yard Clerk or Call Clerk to hours of service with an ending time between 1 A. M. and 5 A. M. to permit of his performing regular work customarily attached to his position connected with a train arriving or departing from the terminal between these hours. This was the sole purpose of the rule and to the best of our knowledge until the instant case arose has been so applied.

The sole duties assigned to the occupant of the involved position at the Northtown Store are those commonly assigned to such class of employes on all other railroads, namely, the supplying of cabooses, issuing material to roundhouse forces, to the oilhouse and to the freight car repair shops. This was the claimant's duties prior as well as subsequent to September 1, 1949. No part of these duties could, in any manner whatsoever, be such as would meet the exception in the rule to assign an employe with an ending time between 1 A. M. and 5 A. M. The Employes feel and contend the Carrier has violated specifically Rule 43 of the Agreement and that the penalty monetary claim is amply supported by the rules of these Agreements.

OPINION OF BOARD: The facts, which are not in dispute, are all set forth in the parties statements and a proper understanding of the issue involved does not require that they be detailed. On that account they will be summarized in a few sentences.

In arranging forces to meet changes due to the Forty-Hour Week Agreement, effective September 1, 1949, the Carrier gave notice its existing six-day, round-the-clock, service at Northtown (Minneapolis, Minnesota) storerooms would be changed by abolishing one of three positions and by substituting in lieu thereof the two remaining positions with assigned hours of the first shift, 8:30 A. M. to 5:30 P. M., five days per week, Monday through Friday, and the second 7:00 P. M. to 4:00 A. M., seven days per week, with Tuesdays and Wednesdays as rest days.

Following inauguration of the foregoing change the Employes filed a claim on the property charging in substance that the ending time of the position with hours 7:00 P. M. to 4:00 A. M. was prohibited by the Agreement and the Carrier's action in fixing such ending time at 4:00 A. M., instead of 5:00 A. M., or later, was in violation of its terms. This claim was progressed on the property to the Carrier's highest reviewing officer and denied. Thereupon, for reasons not here material, the Carrier took steps resulting in the presentation of the claim to this Board.

The sole issue raised by the respective submissions of the parties relates to whether the ending time fixed by the Carrier resulted in a violation of the Agreement. For that reason it should be stated at the outset that his Opinion is limited strictly to such question and that nothing here held or said is to be construed as indicative of either approval or disapproval of other matters incident to the heretofore related change as made by the Carrier.

Rule 43 of the Agreement, conceded by the parties to be decisive of the instant dispute reads:

> "No position will have an assigned starting time between the hours of 12 midnight and 5:00 A. M. No position will have an assigned ending time between 1:00 A. M. and 5:00 A. M., **except that an assignment with ending time between 1:00 A. M. and 5:00 A. M. may be made to meet service requirements.**" (Emphasis supplied.)

The emphasized portion of the rule above quoted is express, concise, clear and unambiguous. Therefore, under every well known rule of contractual construction we are obliged to give the terms therein used their ordinary and usual meaning and have no right, as the Employes suggest, to construe them in accord with what may have been their intention prior

to the time such terms were incorporated in the Agreement. Stated differently, once a contract is negotiated and executed it becomes the contract of the parties and speaks for itself where its language is clear and unequivocal, and neither the Courts or other administrative or semi-judicial bodies have any right to reach out and give it any construction other than that required by its express terms. Still differently stated, the uniform rule is that intention of the parties can never be resorted to in constructing a contract unless the terms of that instrument are indefinite, ambiguous, and so uncertain that what they mean can only be determined by resort to what was intended.

There can be no question regarding the emphasized language appearing in the rule heretofore quoted. It is clear, definite and certain. Therefore, applying the rule just mentioned we are forced to conclude it means just what it says, i. e., that an assignment may have an ending time which is between 1:00 A. M. and 5:00 A. M. if such assignment is made to meet service requirements of the Carrier.

The conclusion just announced necessarily requires an additional one that the Employes' contention Rule 43 does not apply to a store helper's position and is limited solely to positions having duties incidental to the direct movement of trains must be rejected.

Thus, it appears the only question remaining is whether the assignment herein involved, with an ending time of 4:00 A. M., was made to meet service requirements. The record on this point is far from satisfactory. True, it is replete with assertions and counter-assertions which are entitled to little, if any, weight. However, it does contain a statement by the General Storekeeper, setting forth the existing conditions and stating that following a study of Northtown force assignments it appeared that related service requirements could be effectively covered by assigning a second shift store helper to cover the period from 7:00 P. M. to 4:00 A. M. with one hour for lunch. Another bit of concrete evidence is to be found in the fact that prior to the change service requirements necessitated an employe on duty at that hour. The force of this is, of course, weakened by the fact the Carrier was able to arrange so as to blank hours from 4:00 A. M. to 8:30 A. M. Even so, when considered along with the General Storekeeper's statement, and the Employes' concession that prior to September 1, 1949, service requirements were covered by round-the-clock service of store helpers, it is entitled to and must be given consideration. The only other evidence, aside from statements pro and con by officials of the Carrier and representatives of the Carrier interested in progressing the claim on the property, is a letter of M. E. Dale, present incumbent of the involved position, stating no service requirements made it necessary for the Carrier to fix the ending of his shift at 4:00 A. M. He is hardly in position to determine the managerial prerogative of determining what was necessary in order to meet service requirements and for that reason his statement cannot be regarded as sufficient to overthrow the other evidence to which we have referred. Such evidence, in our opinion, even though it is not all that it might be, is enough to make out a prima facie case in support of the Carrier's position the change was made to meet service requirements. Assuming, as the Employes insist, without deciding the point, that the proviso of the rule in question heretofore quoted and emphasized, is permissive and therefore must be exercised with discretion the Employes have offered no proof that the Carrier's action was arbitrary or capricious and hence have failed to establish such action amounted to an abuse of the discretion vested in the Carrier under the rule. This and all that has been heretofore stated leads to the inevitable conclusion that under the confronting facts and circumstances the Carrier's action did not result in a violation of 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 Employe involved in this dispute are respectively Carrier and Employe 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 under the conditions disclosed by the record, the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 6th day of September, 1951.