

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that:

1. Carrier violated and continued to violate its agreement with the Brotherhood, when on February 17th, 1950, starting time on one day each week was varied on eight (8) Prod. Gangs, consisting of eight (8) checkers, eight (8) callers and sixteen (16) truckers; on Stowers-Coast, consisting of two (2) truckers, on Stowers-Outbound, consisting of two (2) truckers; on Tractor Gang, consisting of one (1) checker and one (1) trucker, and on Trailer Gang, consisting of two (2) truckers, at their Wells Street Freight Station at Chicago, Illinois, the following employees being assigned to these positions:

8 Prod. Gangs—Tues. to Fri. 3:30 to 7:30AM & 8:00AM to 12:00PM
Saturday 8:00AM to 12:00PM & 12:30PM to 4:30PM

Checkers: S. Kozak—F. Heisterman—E. Burns—R. Zipp—J. Siggins
R. Lemke—R. Myers—S. Pohoski

Callers: P. Kiely—M. Butterly—A. Adamczyk—F. Beraldo—A. Andrews
J. Bando—S. Hunter—G. Haramija

Truckers: E. Morgan—W. Kielian—W. H. Lee—H. Lindquist—J. Nowicki
A. Whalan—F. Klockwiski—F. Janiak—P. Mustipitch—W. Langaff
S. Shilney—P. Schillaci—P. Carlson—J. Radilsch—D. Orlovich
T. Egan

Stowers-Coast—Tues. to Fri. 7:00AM to 11:00AM & 11:30AM to 3:30PM
Saturday 9:00AM to 1:00PM & 1:30PM to 5:30PM

Truckers: H. Popp—J. Heck

Stowers-Outbound—Tues. to Fri. 7AM to 11AM & 11:30AM to 3:30PM
Saturday 9AM to 1PM & 1:30PM to 5:30PM

Truckers: F. Schuler—J. Mazur

Tractor Gang—Tues. to Fri. 6:30AM to 10:30AM & 11:00AM to 3:00PM
Saturday 8:30AM to 12:30PM & 1:00PM to 5:00PM

Checker—A. Delaney

Trucker—A. Bandish

Trailer Gang—Tues. to Fri. 6:30AM to 10:30AM & 11:00AM to 3:00PM
Saturday 8:30AM to 12:30PM & 1:00PM to 5:00PM

Truckers—S. Roman—J. Stutas

2. That the Carrier shall now be required to compensate the employees listed in the above paragraph (1) on the basis of a day's pay for the time of their regular assignment, and time and one-half for all time worked outside the time of their regular assignment; and

3. That the Carrier be required to compensate these employees and any other employees so worked subsequent to February 17th, 1950, in a like manner until this practice was discontinued the week of September 18th, 1950, when all employees placed on a work week of five days, Monday to Friday inclusive and this practice discontinued.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 17th, 1950 all employees of the Chicago & Northwestern Railway System at their Wells Street Freight Station in Chicago, Illinois, had a uniform starting time each day in the week. On February 13th, 1950 the Carrier re-arranged their force, abolishing most all positions and re-bulletined the positions, some forty (40) of these positions being bulletined and assigned with a starting time on Saturday different than during the other days of the week. Copies of the above mentioned bulletins attached hereto and marked employees exhibit (A). Copies of the above mentioned assignments attached hereto and marked employees exhibit (B).

This practice continued until the week of September 18th, 1950, when it was discontinued and employees placed on assignments with uniform starting time.

POSITION OF EMPLOYEES: There is in effect an agreement between the parties dated August 21st, 1947, effective September 1st, 1947, revised September 1st, 1949, which covers only the freight station operation at Wells Street, Chicago, Illinois, where the Carrier performs the freight house work for the National Carloading Corporation, which agreement was consummated shortly after the Carrier began performing this work. Rule 13, revised September 1st, 1949 reads as follows:

"Rule 13. Changing Assigned Starting Time—Assignments shall have a fixed starting time. When the established starting time is changed one hour or more for five consecutive days, employees affected may, within five days thereafter, upon thirty-six hours advance notice, exercise their seniority rights to any position held by a junior employee, and the other employees affected, may exercise their rights in the same manner."

The first paragraph of Rule 17, reads as follows:

"Rule 17—Days Work and Overtime—Except as provided in Rule 18 hereof, eight consecutive hours or less, exclusive of meal period, shall constitute a day's work, for which eight hours pay

on an award in an arbitration proceedings between the National Carloading Corporation and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees dated New York, October 27, 1949.

The Carrier invites the attention of this Board to the fact that it was not a party to any of the proceedings in the above referred to awards.

On this property we have two agreements with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees covering, among other classes, freight house employees; one agreement applies to the entire railway with the exception of the Wells Street Freight-house operation, while the other agreement covers only the Wells Street operation and is the agreement here involved.

Rule 32 of agreement applicable to the railway, with the exception of Wells Street operation, is, in its application, identical with rule 13 of agreement applicable to employees at the Wells Street Freight Station and provides in part as follows:

"Regular assignments shall have a fixed starting time, which shall not be changed without at least two (2) days' advance notice to the employees affected."

A similar dispute arose in respect to the application of rule 32 in respect to a different starting time of regular positions in the Baggage Mail Department, Chicago Passenger Terminal, on different days of the week although the same starting time on the same days of the week. The position of the employees at that time was identical with the position of the employees in the instant case in that they contended the word "fixed", as used in rules 32 and 13, meant the same time of day for each day of the week; i. e., could not have a starting time of 7:00 A. M., Mondays through Thursdays, and 8:00 A. M., Fridays and Saturdays, etc.

The claim of the employees involving application of rule 32 was similarly submitted to this Board and in Award No. 1663, with Richard F. Mitchell acting as referee, the Board denied the claim. We invite the attention of the Board to the facts and circumstances covered by its Award No. 1663.

The Carrier submits that it would be improper to say on the one hand that at certain stations and over certain portions of the railway the Carrier's application of rule 32 is proper, while on the other hand it is improper at certain stations and over certain portions of the railway under an identical rule the Carrier violated the rule when it assigned its employees to fixed starting times on the same day of the week, although such starting times may not have been the same hour of the day on each day of the week.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 17, 1950, Carrier by bulletin changed the assignments of the claimants by fixing a different starting time on one day of each of their weekly assignments. The Organization contends that the starting time must be the same on each of the days of a regular assigned position and this constitutes the basis of the claim. The applicable rules are:

"13. Assignments shall have a fixed starting time. When the established starting is changed one hour or more for five consecutive days, employees affected may within five days thereafter, upon thirty-six hours advance notice, exercise their seniority rights to any position held by a junior employee, and other employees affected may exercise their rights in the same manner." Rule 13, Current Agreement.

"22. Employees will not be required or permitted to suspend work during regular hours to absorb overtime." Rule 22, Current Agreement.

The record shows that prior to September 1, 1947, the work here involved was performed by National Carloading Corporation. It had an agreement with the Clerks' Organization involved in the present dispute. Rule 15 thereof was, so far as the controlling portion is concerned, identical with the rule now before us. A dispute arose concerning its meaning which resulted in an arbitration award holding that when "assignments shall have a fixed starting time", such clause precludes staggering of starting time for different days of the week. Effective September 1, 1947, the Carrier assumed this work at the Wells Street Freight House and made an agreement with the Clerks' Organization whereby Rule 15 was incorporated in the new agreement as Rule 13. We think it is fundamental that when the Carrier adopted Rule 15 as Rule 13, that it adopted the interpretations previously placed upon it as well. The result is that the Carrier may not properly stagger the starting times of a regular weekly assignment under the rule.

Carrier contends that Award 1663 of this Division resolving a dispute between this Carrier and this Organization in accordance with the Carrier's view is the controlling precedent. This award applied to the general agreement between these same parties and for this reason is not a controlling precedent in the present dispute. This award and the Line Board of Adjustment award, cited therein, apply to the general agreement and not to the one before us. Whatever the similar language in the general agreement may be held to mean, it is clear that the staggering of starting times in a regular weekly assignment is violative of the agreement covering the work at Wells Street Freight House formerly done by the National Carloading Corporation. An affirmative award is in order.

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

That the agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.