

Award No. 6673
Docket No. CL-6769

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly Rule 4-C-1, when R. Proefeta, A. Roberts, L. Roberts, and J. Deal, regular employes located at the 31st and Chestnut Street Freight Station, Philadelphia, Pa., Philadelphia Terminal Division, were required to suspend work on their positions and to perform extra service at another location, the Broad and Washington Avenue Freight Station, Philadelphia, Pa. on January 10 and 14, 1949.

(b) Each be allowed an additional day's pay as a penalty for each day involved due to this violation. (Docket E-748)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

On January 10 and 14, 1949, the Claimants in this case held regular positions of Freight Trucker at the 31st and Chestnut Street Freight Station, Philadelphia, Pa. on the Philadelphia Terminal Division, with tour of duty 8:00 A. M. to 5:00 P. M., less one hour meal period, daily except Sundays and Holidays. These positions are fully covered by the Scope and all of the provisions of the Rules Agreement, and the incumbents have seniority standing in Group 2 on the Seniority Roster for the Philadelphia Terminal Division of the Carrier.

On January 10, 1949, the claimants reported for work as usual at their regular starting time and place at the 31st and Chestnut Street Freight Station, but at 10:00 A. M. they were transported to another Freight Station

under date of August 6, 1951 (Carrier's Exhibit "A"). Consequently, the claim of J. Deal for January 14, 1949, is not payable under any circumstances.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules of working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the use of the Claimants in the manner here involved did not violate the applicable Agreement; that such action was entirely proper under specific provisions of the applicable Agreement; that the Claimants are not entitled to the additional compensation which they claim; and that the claim should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants held regular positions of Freight truckers at 31st and Chestnut Streets Freight Station in Philadelphia. They reported for work at that location at 8:00 A. M., their regular starting time. At 10:00 A. M. they were transported to the Broad and Washington Avenue Freight Station within the same seniority district where they worked until 5:00 P. M. their regular quitting time. They were compensated for eight hours at their regular rate.

The record shows that a publishing company sent a shipment of magazines to the Broad and Washington Avenue Freight Station so that the same were available for unloading from trucks at 8:00 A. M. The work of unloading and loading into cars had to be performed before 5:00 P. M. for the cars to depart in train before 9:00 P. M. on the days involved in the claim.

The disposition of this claim is governed by the application of Rule 4-C-1 to the facts presented. That rule reads as follows:

"Employees will not be required to suspend work during regular hours to absorb overtime."

The situation here presented is akin to that presented to this Board with the same Referee in Award 5625. Here it is clearly shown by the Carrier that

the work performed by claimants was of a nature which had to be completed before regular quitting time. In the light of such evidence any presumption that overtime might be absorbed by moving claimants to the Broad and Washington Avenue Freight Station disappears. There is no additional evidence as to what overtime it is alleged was absorbed by this assignment of the claimants. We cannot speculate with respect thereto. The burden of showing sufficient facts to establish a violation of the Agreement rests with the Employees as asserting parties. We can only conclude that in this instance they have not sustained that burden.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1954.