Award No. 6715
Docket No. CL-6643

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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 provisions of the Rules Agreement, effective May 1, 1942, particularly Rule 4-F-1, when it abolished two positions of Stowman, Court Street Freight Station, Cincinnati, Ohio, effective May 12, 1949 and assigned the duties of stowing freight to incumbents of Trucker Positions.

(b) The incumbents of the Stowman's positions which were abolished be allowed eight hours pay beginning May 12, 1949, and all subsequent dates until violation is corrected. (Docket W-700)

EMPLOYES' 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 Claimants in this case hold positions 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, amended September 1, 1949, 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.

In Cincinnati, Ohio, on the Carrier's Cincinnati Division, the Carrier maintains a Freight Station, commonly referred to as Court Street Freight Station, for receiving and delivery of freight which moves in and out of it either by rail or other transportation facilities.

In order to handle such freight, various positions subject to all of the provisions of the present Rules Agreement are maintained.

There being only two such type of positions involved in this case, reference will be made only to Stowman and Trucker positions.

for your Honorable Board to decide the second issue in this case—whether the presumed Claimants, i.e., C. R. Young and Thomas Wilson are entitled to "eight hours' pay beginning May 12, 1949, and all subsequent dates until violation is corrected." as set forth in Paragraph (b) of the Employes' Statement of Claim. However, in the event your Honorable Board should decide that the Agreement has been violated in this case, the Carrier respectfully submits that there is no express or implied provision of Agreement that sets forth the method of payment requested by the Employes. There is no basis under the Agreement for the payment of "eight hours' pay" as claimed by the Employes. Even if Paragraph (a) of the instant claim were sustained, the presumed Claimants would only be entitled to their actual loss of earnings, if any, by reason of the improper abolishment of the positions in dispute.

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 respectively 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 or working conditions." The National Railroad Adjustment Board is empowered only to decide the dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes 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 with the abolishment of the two (2) Stowman positions the Truckers at the Court Street Freight Station have not been required to perform any service in violation of Rule 4-F-1 of the applicable Agreement, and that the presumed Claimants are not entitled to the compensation which they claim.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

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

OPINION OF BOARD: Prior to May 12, 1949, Carrier had at its Court Street Freight Station, Cincinnati, four Stowmen's positions with an hourly rate of $1.19, and a larger number of Truckers whose rate was $1.17 per hour. As of that date two of said Stowmen's positions were abolished. The Organizaton contends that the duties of the two abolished positions were assiged to Truckers, in violation of the Agreement, particularly 4-F-1, thereof. Following the abolishment the employes who had occupied these positions exercised their seniority to other positions in the same station. The claim is that the occupants of the abolished positions be allowed eight hours per day from May 12, 1949, until violation is corrected.

The Carrier says that a decrease in outbound tonnage justified the reduction in force involved in this dispute; that subsequent to the reduction Stowmen continued to perform all of Stowmen's duties, except those that may

properly be performed by Truckers; that Rule 4-F-1 has no application to the claim because it deals exclusively with situations where positions are discontinued or abolished and new ones created, covering relatively the same class of work, and that no new positions were here created; and that, in any event, the maximum that Claimants could be entitled to would be the actual pecuniary losses sustained.

Much of the record before us is devoted to discussion of the details as to the functions of Stowmen and Truckers; but we do not find it necessary or desirable to undertake to write a definite formula of the specific duties of these respective groups or to say where one leaves off and the other begins. The fact that they carry different classification designations and that there is a differential in their rates suggests that they do not perform the same type of work, even though there may be some overlapping.

It appears that in the bulletins by which Stowmen were assigned their duties were designated as "stowing freight, blocking, bracing, strapping and bulkheading," while the duties of Truckers were likewise designated as that of "handling and trucking freight." In the light of these facts we do not think it would be proper to say that Truckers may perform all stowing, except blocking, bracing, strapping and bulkheading.

The answer to the problem before us appears to be found in the admitted facts of record. There is before us a joint investigation report of the parties which recites:

> "After the abolishment of these (Stowmen's) positions, the Truckers stowed all freight that was necessary to be arranged to prevent damage."

There is also a joint statement of facts which says:

> "After the abolishment of these (two) positions any stowing work necessary was performed by truckmen in the gang loading the freight."

We think these stipulated facts preclude the Carrier from now asserting that work rightfully belonging to Stowmen was not performed by Truckmen subsequent to May 12, 1949.

The Carrier urges, however, that Rule 4-F-1 was not violated because no new positions were created, citing Award 6022, and that this being true the claim should be denied. It is further asserted, without prejudice to this contention, that if the claim is sustained the maximum damages that could possibly be assessed would be for actual loss of wages suffered by the Claimants. The Employes say that the effect of the Carrier's action in the instant case was to create new positions, resulting in the violation of Rule 4-F-1 and thereby warranting the imposition of the penalty sought. They rely principally on Award 4315 involving the same parties and rule.

Award 6022 is clearly distinguishable on the basis of the facts involved. In Award 4315 this Board did hold that under circumstances comparable to those in the case here before us the Carrier's action had the effect of creating new positions in violation of Rule 4-F-1 but the claim was only for any monetary loss sustained. We cannot regard that Award as a precedent for sustaining the demand made in the claim presently before us. The record here shows that upon the abolishment of their Stowmen's positions the Claimants exercised their seniority to other Group 2 positions in the same yard. As in Award 4315, we shall direct that Claimants be compensated for any monetary loss sustained, beginning May 12, 1949.

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 the Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon,
Secretary

Dated at Chicago, Illinois, this 16th day of July, 1954.