

Award No. 7786

Docket No. CL-7534

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated the Clerks' Agreement when it required by unilateral action claimants H. R. Feild on Position No. 33, C. L. Francione, Jr. on Position No. 34 and A. E. Ivey on Position No. 35, Inspectors, rate \$15.30 per day, El Paso, Texas, to change their regular assigned positions.

(b) That the involved employes and their successors, if there be any, effective October 1, 1952, on all work days thereafter until this dispute is settled, be paid a day's wages in addition to the compensation already received account being required to perform work on other than their regular assigned positions.

EMPLOYEES' STATEMENT OF FACTS: The Bureau maintains at El Paso, Texas, three positions described as Inspectors, Positions Nos. 33, 34 and 35, with the principle duties as "Freight Inspection, LCL, car load and stop cars for classification, packing, loading and bracing, also Loss and Damage inspection."

In furnishing services to the carriers and public, these positions were assigned to certain railroads and territory or zone at El Paso, Texas, in order to avoid overlapping or having two or more men at the same carrier or two or more men in the same territory inspecting loss and damage shipments received by the consignees. See Employees' Exhibits 1-A, 1-B, 1-C and 1-D which establish beyond doubt the territory or zone for the Inspectors.

Prior to October 1, 1952, Employees' Exhibit 2-A shows H. R. Feild was assigned to Southern Pacific and T&NO, also the territory and name of industries therein. Employees' Exhibit 2-B shows claimant C. L. Francione, Jr. assigned to Texas and Pacific, also the territory and name of industries therein and Employees' Exhibit 2-C shows claimant A. E. Ivey assigned to Santa Fe, also the territory and name of industries therein.

On October 1, 1952, the Bureau changed the assignments of the three claimants and Employees' Exhibit 3-A lists information as to the industries that are now assigned to claimant Feild, but omitted reference to the railroad and

location, title, brief description of position, rate of pay, assigned hours of service, assigned meal period, assigned days of rest and if temporary, probable or expected duration." (Emphasis ours.)

In view of the information contained herein we are confident that in your deliberation of this case you will hold as we do that the rules of the Agreement in effect between the Bureau and the Brotherhood of Railway Clerks have been fully complied with and that in your findings you will conclude there is no merit to this claim and that it should, therefore, be denied.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the claim of the Organization that Inspectors H. R. Feild, C. L. Francione, Jr., and A. E. Ivey, on positions Nos. 33, 34 and 35 "were (October 1, 1952) arbitrarily and by unilateral action on the part of the Bureau changed to new positions with a complete change of assignment" in violation of Rules 3 (seniority datum), 6 (promotions, assignments and displacements), 7 (bulletined positions), 8 (declining promotion), 9 (time in which to qualify), (36—absorbing overtime) and 42 (rating positions)."

Organization contends that prior to the change each of the claimants would "report direct to the railroad freight station assigned to him for the purpose of reviewing waybills, etc., in determining first if there were any shipments that needed inspection in determining the correct classification and tariff description for rating purposes, next it was to determine if there were any shipments billed to stop and partly unload so these shipments could be inspected in determining if the loading requirements have been complied with. At intervals during the day each of the claimants would contact the Bureau's El Paso office by telephone in determining what industries were requesting inspections on loss and damage shipments."

Organization continues:

"In view of the city being divided into zones, the Clerk in the Bureau's El Paso office would know when a call was received from an industry for a loss and damage inspection which one of the claimants would be given this call so they would make the necessary inspection. At the railroad freight house where the claimants maintain their headquarters there was desk space assigned to them where they maintain copies of the classification and some tariffs also a certain amount of files pertaining to their work which is evident the claimants would have a regular assignment as supported by Employees' Exhibits 1 and 2."

The Organization makes the claim that the freight station from which each claimant started his daily work, the zone in which each worked and the Bureau's customers each called upon were affixed firmly to each particular job assignment, and Bureau violated the applicable agreement by realigning the work assignments of the 3 claimants.

As evidence in support of its contention that the starting point, customers called upon and zone in which situated were affixed to each particular job (Nos. 33, 34 and 35) and the occupants thereof, Organization offers Memoranda signed by Bureau's Agent, T. A. Steele, dated November 4 and 30, 1949, with respect to the territory and companies assigned to the positions in question.

Organization takes the further position that the Bureau should have abolished the positions, and assignments Organization asserts were attached thereto prior to October 1, 1952, and rebulletined them as new positions if efforts at negotiating the change had failed.

Bureau takes the position that the assignments of the positions in question were not frozen; that when it first bulletined the Inspector positions it followed the requirements of the applicable Agreement to the letter. Copy of Bureau's bulletin covering positions in question shows it listed the title as "inspector", the location as "El Paso, Texas" and the duties as follows:

"Freight inspection, L.C.L., carload and stop cars for classification, packing, loading and bracing, also loss and damage inspection."

Bureau asserts that each of these Inspector positions was set up on a city-wide basis in El Paso, subject to assignment by the Bureau, which is its prerogative, because the business or service of the Bureau itself is city wide.

Bureau further argues it was not obligated by the Agreement to abolish the jobs and then rebulletin them, as Organization contended, because Rule 19 requires that a position must be bulletined only when the rate thereof has been changed, other than by negotiation; that when an agreement enumerates certain conditions that call for a position to be rebulletined and/or permits the exercise of seniority (as in the change of Starting Time Rule), "there is an implied exception of all others."

It should be pointed out here that the collective bargaining relationship between Organization and Bureau did not begin until September 1, 1949.

Bureau states that prior to the present system, Inspectors did not have specified consignees to call upon, and in order to eliminate "this uneconomical and inefficient system", effective November 7, 1949, the Bureau unilaterally and without protest for the Organization, established a list of the consignees each Inspector was to handle. Since then, the list has been changed many times, as stated by Bureau's Manager: "In order to keep the work equal a list of warehouses or industries furnished each inspector has been and must be changed from time to time due to seasonal movement of various commodities, business fluctuating, also warehouses and industries moving from one location in the city to another."

The change of October 1, 1952 here complained of had the effect of claimant Francione being assigned territory and some consignees previously covered by Feild; Feild being assigned territory and some consignees previously covered by Ivey, and Ivey being assigned territory and some consignees previously covered by Francione.

Organization, however, argues that this action violated the applicable Agreement because each Inspector had a separate "headquarters" (the freight station at which each began his daily rounds) which could not be unilaterally changed without violating the seniority rights of the assignees; that claimants had acquired and held their respective positions through the exercise of their seniority rights in accordance with the Agreement, and were thereunder guaranteed the right to occupy those positions and perform the work attaching thereto.

Organization, as evidence of its claim the involved positions had specific individual assignments at one of the designated railroad local freight offices, produced copy of Bureau's bulletin dated May 18, 1952, signed by Bureau's Agent T. A. Steele with relation to certain inspections on a call basis, a portion of which states: "To further clarify the above, each inspector will be subject to call from the Agent of the railroad at which station the inspector is assigned." (Emphasis added.)

Bureau offers as a counter argument, that the headquarters for these three Inspectors is its Agent's (T. A. Steele) office in El Paso. One of Organization's exhibits (1-B) in the record is a bulletin from Mr. Steele dated November 4, 1949 addressed to the Inspector, and stating, in part: "It will be necessary, however, for each of the railroads at El Paso to use this office as a joint or receiving office for all calls received from consignees covering requests

for damage inspection, which will make it necessary that each of the inspectors phone the Bureau office daily at 10, 2 and 4 o'clock, so that they can be furnished the information covering any calls received during the day."

Organization cites numerous Awards in support of its position. One is Award 6153 (Stone) reading in part:

"In the absence of showing to the contrary we think the presumption is that the assignment of certain work in the specific area to one job was intended to exclude that area from the field of a job assigned at large."

It also cites Award 4646 (Connell) as "equally applicable here." The portion quoted is:

"The intent and purpose of the Seniority and Bulletining Rules is to protect the Employees' rights to the respective positions they had secured."

An examination of the record in Award 6153 reveals circumstances not obtaining here. In 6153 Bureau, according to Organization, caused Claimant Carroll ("street man" inspector) and Claimant Hoffman (Live stock agent at Union Stock Yards) to suspend work on their regularly assigned positions to assist Inspector Thiemann (who worked at Great Atlantic and Pacific Tea Company, Chicago) in the preparation of forms CS-35, work normally attached to Thiemann's job, but which had accumulated to a considerable degree during the tenure of Thiemann's predecessor.

There, Organization predicated its argument on the Suspension of Work to Absorb Overtime Rule. True, Organization claims violation of the same rule in the case now before us, but it is only one of 7 rules it alleges have been violated. In arguing the instant case, Organization did not go beyond listing Rule 36 (absorbing overtime). It pleaded mainly on a violation of the seniority, promotion and bulletin rules of the agreement.

We do not believe the circumstances on Award 4646 are analogous. In that case, an assistant foreman reported off due to illness. A mail and baggage handler exercised seniority to fill the vacancy and the other mail and baggage handlers on duty were rearranged, and, Organization argued, one position was either blanked or the duties spread over other employees. Carrier offered the argument it acted in an emergency. The prevailing Agreement did empower Carrier to make temporary changes necessary due to "irregularities in train arrivals and departures and volume of business to be handled", not any of which reasons were argued, or, in the evident opinion of the Board in that case, existed.

It is quite evident from the record that the nature of the duties performed by the claimants here during the course of a day's work were the same after the change complained of as before. The main argument of Organization rests on where and with whom such duties are performed. There is no question raised here of the rate paid not being proper.

With respect to the change in assignments, Organization points up Bureau's refusal to agree to a joint check to establish "facts as to what location the Inspector positions have been working", and cites Award 1256 (Tipton) which held there that "Carrier refused leaving the inference that the petitioner's position was correct."

Because Bureau argues it had the right to make the changes complained of, this case must turn on that basic point and not on its refusal to agree to a joint check.

We, therefore, conclude:

1. Bureau complied fully with Rule 7 in bulletining Inspector positions 33, 34 and 35.

2. Such bulletins did show "location" of positions as "El Paso, Texas".
3. In carrying out its prime obligation of supplying its constituent Carriers with the services they properly expect of it, Bureau had the right to do what it did in the instant case.
4. In support of this conclusion, we cite two prior Awards of the Division:

Award 5331 (Robertson):

"Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interest of efficiency and economy." (Emphasis added.)

Award 6711 (Donaldson):

"* * * No rule has deprived Management of discretion to plan and apportion work that properly is within an employee's assignment and our Awards do not condemn under such circumstances."

5. Accordingly, Bureau's action of October 1, 1952 was not violative of the applicable 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 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 not violated.

AWARD

Claim (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1957.