Award No. 10131
Docket No. CL-10014

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) Carrier violated the current Clerks' Agreement when on January 15, 16 and 22, 1957, it called and used warehouse laborers, group 3 employes, and refused to compensate them in accordance with the rules of said Agreement, but instead compensated them for actual time worked.

(2) Carrier now be required to pay C. N. Bishop an additional three hours pro rata rate for January 15, 1957 and an additional three hours for January 16, 1957.

(3) Carrier now be required to pay C. N. Bishop an additional four (4) hours at pro rata rate for January 22, 1957.

(4) Carrier now be required to pay J. H. Jefferson an additional three (3) hours at pro rata rate for January 15 and an additional three hours for January 16, 1957.

EMPLOYES' STATEMENT OF FACTS:

(1) Carrier operates at 2770 Gaston Avenue in Dallas, Texas a warehouse which is a part of the Dallas Freight Warehouse. At this warehouse all inbound merchandise consigned to the Dalworth Carloading Company, a subsidiary of the Carrier, is unloaded from such inbound cars.

(2) On January 15, 1957 the Check Clerk in charge of this warehouse called claimants C. N. Bishop and J. H. Jefferson to begin work at 2:00 A. M. and worked these men until 7:00 A. M. when they were laid off, allowing them pay for five (5) hours actual time worked.

(3) On January 16, 1957, the Check Clerk in charge of said warehouse called Bishop and Jefferson to begin work at 3:00 A. M. and worked them

make split-trick assignments out of some of the regular assignments of eight consecutive hours, exclusive of the meal period. Under the Brotherhood's theory, we would have to, and perhaps we might be able to find a way to, abolish some regular assignments and re-establish them so that their eight hours of work would not be consecutive, but would be spread across twelve hours of chronological time. Then we would qualify, under the Brotherhood's theory, to use furloughed or extra men for short-hour work at the pro rata rate, in accordance with Rule 26 (c).

But that is not what the Rule means. It means that we should make as many regular full-time assignments as we can, and that as few of them as practicable should be split trick assignments; and that, when that has been done, short-hour work is all right to take care of what is left over.

There is no contention that there was enough short-hour extra work to constitute one full split-shift assignment every day, five days a week. It is obvious from the facts that there was not enough work to make up any more regular assignments of any kind. The only question of interpretation involved in this case is whether the Clerks are correct in their present contention that Rule 26 (c) means that we have to have **some** split trick assignments, before we can have the left-over fluctuating extra work done on a short-hour basis at pro-rata rates.

The plain words of the rule, and the context provided by the other rules, and the explanation provided by the history of the rule, all show that that is not the correct interpretation of the rule. The rule is designed to minimize split-shift assignments, and to avoid them wherever practicable; not to guarantee their existence.

Therefore, the Carrier respectfully requests the Board to deny the claim.

All known relevant argumentative facts and documentary evidence are included herein. All data presented in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

Exhibits not reproduced.)

OPINION OF BOARD: Claimants are Group 3 employes — Warehouse Laborers or Freight Handlers who once held regular positions with the Carrier. They were furloughed, or cut off in force reduction. On January 15, and January 16, 1957 the Carrier called Claimants Bishop and Jefferson to work a total of five (5) hours each day. On January 22, 1957 the Carrier called Claimant Bishop (only) to work a total of four (4) hours. The Carrier paid the Claimants for actual time worked. The claim was filed for the difference between what the Carrier paid them and eight (8) hours pay for each on such days.

Rule 26 of the Agreement provides for a limited use of part-time freight handlers. Under certain circumstances they "may be worked on a part-time basis to the extent necessary to handle the traffic after every effort is exhausted, first to make all possible regular eight (8) hour assignments, exclusive of the meal period; second, after making such split trick assignments of eight (8) hours within twelve (12) as may be practicable."

The Organization does not question the Carrier's right to use furloughed employes, but they do question their right to use such furloughed men for less than a day's work and a day's pay. The Organization stated that they were

"reliably informed" that on many instances before the prior case extra or furloughed employes who were used by the Carrier at their Dalworth Warehouse (where the Claimants were used) were sent after handling the traffic at that location to the Carriers main warehouse to complete their eight hours. They indicated that it appeared that such a practice could have been followed in the instant case.

Carrier contends that a total of twenty-four (24) hours of extra work in January was all that is in evidence. That such would not make "practicable" a regular position or a split trick.

The exception to the rule on which the Carrier relies is a limited one. However, based on the facts presented there was no evidence of regular work on which to establish a regular eight (8) hour assignment. Nor can we say under the circumstances of the case that a split trick assignment was practicable.

The Carrier appears to us to have made proper use of a limited exception to Rule 26.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1961.