

Award No. 12421

Docket No. CL-11863

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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, except as amended, particularly the Rate Agreement, effective August 1, 1951, and the Tonnage Understanding in effect at the Freight Transfer Station, Trenton, N.J., New York Region, on April 24, 1957, when Gang No. 38 worked with one trucker short and the remaining members of the gang were improperly compensated.

(b) W. L. Hofmann, Tallyman, A. Marchetti, Loader, and C. Varonni and J. J. DiMarcello, Truckers, be paid the difference in pay allowed and pay due under the Tonnage Understanding for services performed on April 24, 1957. [Docket 478.]

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case held 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, except as amended, covering Clerical, Other Office, Station and Storehouse Employees 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.

There is also in effect a rate agreement, which was effective August 1, 1951, designated as follows: "Agreement Entered Into By And Between The Pennsylvania Railroad Company and Clerical, Other Office, Station and Storehouse Employees of The Pennsylvania Railroad Company Designated Herein Represented by Brotherhood of Railway and Steamship Clerks, Freight

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were members of a gang usually composed of 1 tallyman, 1 loader and 3 truckers. On claim date, however, one trucker was absent.

In addition to compensation based on an hourly rate of pay, these employees were covered by a special "Tonnage Understanding" under which they were eligible to earn additional compensation based upon tonnage handled by the gang in excess of 38 tons. As of claim date, the hourly and tonnage rates applicable to claimants were as follows:

Occupation	Hourly Rate	Tonnage Rate
Tallyman	\$2.036 (\$16.29 per 8 hrs.)	.4288
Loader	1.966 (\$15.73 per 8 hrs.)	.4144
Trucker	1.942 (\$15.54 per 8 hrs.)	.4090

On April 24, 1957, because the gang was short 1 trucker, the Carrier reduced the 38-ton minimum by one-third to 25.5 tons, or 51,000 pounds. The gang handled 127,628 pounds of freight that day. In computing compensation for Claimants, the Carrier subtracted 51,000 pounds from 127,628 pounds and paid each man at the appropriate rate of his position multiplied by the number of tons represented by 76,628 pounds (38+). This was paid in addition to the hourly rated compensation for that day. Thus, Claimants for April 24, 1957, were paid as follows:

Name	Occupation	Hourly Rate	(x 8 Hrs.)	Ton Rate	(x 38.314 Tons)	Total Compensation
W. L. Hofmann	Tallyman	\$2.036	\$16.29	.4288	\$16.42	\$32.71
A. Marchetti	Loader	1.966	15.73	.4144	15.87	31.60
C. Varonni	Trucker	1.942	15.54	.4090	15.83*	31.37
J. J. DiMarcello	Trucker	1.942	15.54	.4090	15.83*	31.37

*The truckers were paid \$.14 more than intended as $.4090 \times 38.314 = \$15.67$.

Petitioner asserts Claimants were improperly paid, contending they should have been compensated as follows:

	Tallyman	Loader	Each Trucker
"First 51,000 pounds	16.29	15.73	15.54
Second 51,000 pounds:	16.29	15.73	15.54
Balance 25,628 pounds	8.18	7.90	6.80
TOTAL: 127,628 pounds:	40.76	39.36	37.88"

The record indicates that the same "short gang" situation as is present here has occurred in the past. The Petitioner contends that the rates have always been adjusted in accordance with the method it argues should have been used in this case; Carrier insists that the method of payment it used to compute the compensation paid the Claimants is consistent with that followed in the past. Neither party offers any evidence to support its assertions. Evidence of past practice on this crucial point is essential to a proper decision by the Board. Lacking such evidence, we would have to decide the dispute on speculation and assumption as to the proper method of payment. This, the Board may not properly do.

Accordingly, the claim will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.