Award No. 13008

Docket No. MW-13029

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE PHILADELPHIA BELT LINE RAILROAD COMPANY

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

(1) The Carrier violated the agreement beginning with Friday, February 10, 1961, when it reduced the work week of its section gang to four days a week on each alternate week.

(2) Foreman S. Briglio, Section Laborers T. S. Mocarski, J. Hapak, F. J. Briglio and F. M. Giannini each be allowed eight hours' pay at their respective straight time rates of pay for the time lost on Friday, February 10, 1961, and for each other day on which they are not permitted to work in violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved herein is competently set forth in the correspondence exchanged between the parties which reads:

"February 13, 1961

Mr. M. G. Preston
Vice President and General Manager
Philadelphia Belt Line R.R. Co.
Philadelphia, Pennsylvania.

Dear Sir:

Claim is presented that the Carrier violated the effective agreement when on Friday, February 10th, 1961, it instructed its section gang not to work and also instructed them not to work on alternate Fridays indefinitely.

That Foreman, S. Briglio, Section Laborers, T. S. Mocarski, J. Hapak, F. J. Briglio and F. M. Giannini now be paid 8 hours' pay for Friday, February 10th, and for each day they are not permitted to work until this violation is discontinued.

The Carrier desired to reduce expenses by 10% and in order to accomplish this, reduced the work week to four days in alternate

Carrier submits what the Brotherhood is here seeking is a new rule not agreed to or contemplated by the parties when they negotiated their collective bargaining agreement. The Carrier is well aware that neighboring railroads have specific rules which prohibit the laying off of gangs for short periods; however, no such rule is in effect on this Carrier. Carrier maintains that the National Railroad Adjustment Board in the exercise of its statutory function must not place the parties in a position different than bargained for and it should not write a new rule for the parties and must necessarily deny the claim of the Brotherhood.

Under all the facts and circumstances, Carrier submits that the Brotherhood's claim is inaccurately stated and that the Carrier complied with all of the rules of its agreement with the Brotherhood in the abolishment of its section gang on February 10, 1961. Carrier maintains that there was no reduction of the work week of its section gang to 4 days a week on each alternate week, and that there is then no violation of any rules in its collective bargaining agreement and, therefore, submits that the claim should be denied in its entirety.

OPINION OF BOARD: Claimants S. Briglio, T. S. Mocarski, J. Hapak, F. J. Briglio and F. M. Giannini are the entire track force of this Carrier.

Just prior to February 10, 1961, Carrier attempted, by discussion with the Organization, to arrive at "a mutually satisfactory solution" to the problem of reducing the Carrier's expenses. The Carrier proposed to accomplish this by reducing the work week; this was not acceptable to the Organization. According to the Carrier, the only solution acceptable to the Organization was a reduction in force by the abolition of one position, which proposed solution was not satisfactory to the Carrier. Finding no mutually agreeable solution by discussion, the Carrier then announced the abolition of the jobs occupied by the Claimants effective Friday, February 10, 1961, and the rescinding of the abolition effective Monday, February 13, 1961; at the same time, according to the Employes and undenied by the Carrier, the Carrier instructed Claimants not to work on alternate Fridays thereafter for an indefinite period of time, the duration of which is not ascertainable from the record.

The Organization claims that the Carrier violated the Agreement "when it reduced the work week of its section gang to four days a week on each alternate week." The Carrier denied this, contending that nothing in the Agreement restricts its right to abolish positions for short periods of time; Carrier states: "* * * nor do we agree with your apparent contention that Rule 12 constitutes a guarantee that positions once established will work 40 hours in a week." The Organization argues that Rule 12 is a guarantee of work for five 8-hour days, Monday through Friday, each week for each employe.

The language of Rule 12 in this Agreement does not read as an injunction ordering that employes must receive pay for some minimum amount of time on certain days or by the week, or that daily and/or weekly working hours shall not be reduced below a specified minimum, as does the language in the Agreements in the Awards cited by both parties (viz: 4170, 5127, 5210, 5463, 5634 and 11712). Rather, Rule 12 is worded primarily as a set of definitions of "a day's work" and "the work week." Examination of Rules 17, 18 and 19 confirm that Rule 12 is basically a definition clause, and without an explicit statement of guarantee as guarantee, would require clear evidence of practice or other clear proof that it intends a guarantee to establish it decisively as a rule guaranteeing 8 hours' work and/or pay for five days each week. Examination of Rule 17 supports this conclusion: Rule 17 provides, among other things, for minimum amounts of time, less than 8 hours,

guaranteed to be paid for in the event that less than 8 hours of work is performed in a work day for a variety of reasons.

The facts in this case indicate that a reduction in work force was necessary to achieve the Carrier's desired reduction in expenses; the method of reducing forces is spelled out in Rule 5, which requires in (b) "When force is reduced, the senior employes shall be retained." Again, to quote this Board as it expressed itself in Award 5127: "* * * the Carrier may not, under the pretense of abolishing positions, evade the application of an established rule, nor take undue advantage of the employes by discontinuing positions when there is real necessity for their continuation."

That the alleged abolition of jobs on Friday was not, in fact, a genuine abolishing of the positions is made evident by the immediately subsequent restoration of the "abolished" positions by a rescinding of the abolition as of the very next regular work day; had the positions actually been abolished, the vacancies occurring on the renewed need for filling the positions should have been filled through the application of the posting procedures set forth in Rule 11. The work of the positions the Carrier sought to abolish had not disappeared to such an extent as to leave nothing for the employes to do for a substantial part of the time and a reasonably sustained period; the Carrier's action was an attempt to circumvent the requirement of Rule 5 that in a reduction of forces, the senior employes shall be retained.

This Board must decide, therefore, that under the terms of this Agreement, the Carrier may not choose between shortening the work week as it is defined in Rule 12, and reducing the work force by applying the terms of Rule 5; when a reduction in force is necessary, it may be properly accomplished only in compliance with the requirements of Rule 5.

The record does not disclose when, if ever, the Carrier restored the normal schedule of a five-day, 40-hour work week. In sustaining the claim as it is stated in both (1) and (2) in the Statement of Claim, it is the intention of the Board that the Claimants be paid 8 hours' pay at their respective straight time rates for each Friday they did not work as a result of the Carrier's instructions, beginning with Friday, February 10, 1961, and ending when the Carrier finally rescinded, or, if it has not yet done so, finally rescinds, the instruction not to work on alternate Fridays for an indefinite period.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.