Award No. 13032
Docket No. CL-12668

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4939) that:

(a) The Carrier violated the current Rules Agreement when on March 14, 1960 it unilaterally transferred 25 cars of merchandise freight that had been assigned and placed in the Brewery Street Freight Terminal at New Haven, Connecticut to the Harlem River Freight Terminal in New York and had these cars worked at the latter point.

(b) That the Messrs:

Name	Amount Claimed Punitive	Name	Amount Claimed Punitive
F. O'Neill	$31.74	A. Bodle	$26.32
C. Connelly	28.32	A. Derrico	26.32
D. Kapsinow	28.32	G. Williams	26.32
E. Lammer, Sr.	28.32	J. Souza	26.32
M. McGuire	28.32	P. Giammore	26.32
T. Enright	28.32	F. Valeriano	26.64
F. McGreevy (4 hours)	14.16	J. Baldetti	26.64
J. Wier	28.32	C. Hall	26.64
L. Canestrari	26.32	T. Purcell	29.55
B. Gilhuly	26.32	C. Casey	28.68
J. Giousky	26.32	G. Senna	29.55
H. J. Milone	26.32	C. I. Allen	31.04
H. Page	26.32	H. R. Decker	29.22

at Brewery Street Freight House be paid one day's pay at the punitive rate of their position as shown, for Saturday, March 12, 1960, and any other Clerk, Freight Handler, not listed that may, through investigation, be involved.

Further, to relieve the congestion and resulting delay Carrier diverted the cars here complained of to freight stations in other seniority districts. However, it appears to have diverted no more than necessary to ease the congestion without affecting full time employment at 11th Street Station since the employes there worked more overtime in the latter part of November, after the diversions than before.

In the situation here presented as in that in Docket 7789, we find that due to conditions beyond Carrier's control the employes were unable to accomplish timely performance of the work and Carrier was thereby released from any obligation which might exist to the extent that it acted in the diversion of cars to other freight stations for handling.

AWARD

Claim denied.

Signed this 17th day of July, 1957."

Summing up, it is Carrier's contention that no rules of the Agreement were violated simply because employes at Brewery Street Freight House were not permitted to work overtime on March 12, 1960, nor because twenty-five cars were moved to Harlem River in order to relieve congestion at New Haven.

(Exhibits not reproduced.)

OPINION OF BOARD: The following facts appear to be uncontroverted in the record:

On March 3 and 4, 1960, a very severe snow storm struck the eastern and central part of the country and seriously impeded all forms of transportation, including the railroads. Because of heavy snow accumulation all employes who reported for work at the Freight House at the Brewery Street Terminal at New Haven, Connecticut, on March 4 were utilized in snow removal operations and no cars were unloaded at the freight house on that day. Because of storm conditions the normal number of new arrivals did not arrive over the weekend and on Monday morning, March 7, there were 85 cars on hand for unloading. By Friday, March 11, the number of cars left over at the close of the day's operation had decreased to 38. On the weekend of Saturday, March 12, and Sunday, March 13, more than the usual number of cars arrived and as of Monday, March 14, there were 117 cars on hand for unloading. Carrier unilaterally diverted 25 of these cars to the Harlem River Station, New York, which station was in shape to handle the additional work without detriment to its normal operation. The forces at the Brewery Street Freight House were worked on their day off on March 19 as the accumulation of cars at Brewery Street could not be cleaned up by the close of operation on Friday, March 18.

It is the contention of the Petitioners that the employes at the Brewery Street Freight Terminal, New Haven, hold seniority in a seniority district separate and distinct from the employes at the Harlem River Freight Terminal; that no effort was made by the Carrier to seek agreement with the employes for this transfer of work from one seniority district to the other as required by Rule 14 of the effective agreement. It is further urged by the Petitioners, that, "This accumulation was a violation that would not have occurred if the employes were worked overtime on Saturday, March 12, 1960."

Rule 14 provides, in part, as follows:

"RULE 14. CONSOLIDATIONS, TRANSFERS

When for any reason the Company consolidates offices, departments or sub-departments, or transfers work or assignments from one seniority district to another, the following rules will govern. When a part of a single seniority district located in one town or city is moved to another town or city part C of this rule will govern as to employes whose assignments are to be moved.

A. Not less than thirty (30) calendar days prior notice will be given to the General Chairman when more than one city or town is involved; when within the same city or town such prior notice will be not less than ten (10) calendar days. Upon request, conferences will be had with the duly accredited representative to work out the application of these rules."

It is the contention of the Carrier that the accumulation of cars at the Brewery Street Terminal had its inception in and was entirely due to the abnormal weather conditions prevailing on March 3 and 4, 1960, over which the Carrier had no control; that the employes at the Brewery Street Freight Terminal were used to capacity and unable to keep their work current and no more cars than necessary were diverted to the Harlem River Station to relieve the congestion; that Rule 14 has no application to the situation presented in this case; that no seniority has been taken away from anyone, there has been no abolishment of any gangs, no consolidation of forces and no transfer of positions from one station to another; that no cars belong exclusively to the employes of that district until they have actually been spotted at the platform tracks.

It is apparent from a review of the record that Rule 14 was not intended to apply to an emergency situation as was presented here. The numerous examples that have been cited by Petitioner to show a past practice under Rule 14 all relate to consolidations or transfers of a permanent nature. Except as it has restricted itself by the agreement, the assignment of work necessary for its operations lies within the Carrier's discretion, it is for the Carrier to arrange the work in such a manner as to provide efficient, economical and satisfactory service to the shipping and traveling public. There is nothing in the Agreement which provides that the employes can dictate when they shall work overtime.

In Special Board of Adjustment No. 177 — Award No. 15, wherein the Petitioner in the present matter was involved and where circumstances therein were quite similar to those presented here we note the following:

"Further, to relieve the congestion and resulting delay Carrier diverted the cars here complained of to freight stations in other seniority districts. However, it appears to have diverted no more than necessary to ease the congestion without affecting full time employment at 11th Street Station since the employes there worked more overtime in the latter part of November, after the diversions than before.

In the situation here presented as in that in Docket 7789, we find that due to conditions beyond Carrier's control the employes were

unable to accomplish timely performance of the work and Carrier was thereby release from any obligation which might exist to the extent that it acted in the diversion of cars to other freight stations for handling."

Here as there we find that due to conditions beyond the Carrier's control the employes were unable to accomplish timely performance of the work and to relieve the congestion and resulting delay Carrier diverted the cars complained of.

See, also, Special Board of Adjustment No. 177 — Award 13; Special Board of Adjustment No. 17 — Award No. 13.

For the foregoing reasons a sustaining award is not justified.

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.