Award No. 13153
Docket No. MW-13022

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BELT RAILWAY COMPANY OF CHICAGO

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

(1) The Carrier violated the Agreement when it required the incumbents of the positions of Assistant Extra Gang Foreman, Extra Gang Foreman and Track Welder, as respectively advertised by Bulletins Nos. T-1-60, T-4-60 and T-8-60 with headquarters at the Maintenance of Way Shop at Clearing, to use the site of work on any particular day as headquarters for that particular day.

(2) The Carrier be directed to discontinue said violation by assigning the incumbents of the aforesaid position to use the Maintenance of Way Shop at Clearing as their respective headquarters."

EMPLOYES' STATEMENT OF FACTS: The positions here in question were established by Bulletins Nos. T-1-60, T-4-60 and T-8-60, with said bulletins designating the Maintenance of Way Shop — Clearing as the headquarters. The aforesaid bulletins read:

"THE BELT RAILWAY COMPANY OF CHICAGO

SUB DEPARTMENT:

MAINTENANCE OF WAY — TRACK

May 18, 1960

NOTICE NO. T-1-60

TO EMPLOYES CONCERNED:

The following position is hereby advertised for bids in accordance with RULE 30 of BROTHERHOOD OF MAINTENANCE OF WAY AGREEMENT.

BIDS MUST BE FILED IN WRITING WITH THE UNDERSIGNED WHERE THEY WILL BE RECEIVED UNTIL 3:00 P. M. (C.S.T.) May 31st, 1960.

It eliminates the waste of manpower which would most certainly be the result of complying with the wishes of the organization when it insists that employes should report to the headquarters (in this instance, Maintenance of Way Shop at Clearing) and then proceed to their work location in some instances several miles distant from the headquarters and then again stop doing the work for which they were hired and spend time traveling back to the headquarters in Clearing.

In each instance where the assembly point is designated, the employes report for and end their day at the tool house or other facility within a short distance of their work location where they can change clothes, wash up, eat their lunch, etc., under practically the same condition as they would at the headquarters. The Company arranges to deliver necessary tools and equipment to the work locations where they are made available for use by the employes.

The Carrier's prerogative to designate the assembly point was established many years ago when Rule 8 was incorporated in the Agreement. Rule 8 reads:

"RULE 8. STARTING POINT

Employes' time will start and end at an assembling point designated by the employer."

That privilege was exercised by the Carrier for many years after it was first established by Rule 8. Apparently it did not please the representatives of the employes who sought to destroy that Carrier privilege by submitting a dispute involving an interpretation of Rule 8 to the Third Division, NRAB, in September, 1951, which was decided on July 24, 1952, in Award No. 5886 of the Third Division, NRAB, in which the Board expressed its opinion as follows:

"**OPINION OF BOARD:** This is a claim by the Organization on behalf of five named Bridge and Building employes. The claim is that these employes had assigned headquarters at Clearing yards which was also their assembling point, and that for a period of time in January and February, 1950, the Carrier in violation of the Agreement changed their assembling point to 103rd and Calumet River. On account of this alleged violation the Organization on behalf of the Employes claims one hour each day at the overtime rate on which they were required to assemble at the new or changed assembling point.

The Carrier contends that it at all times had the right under Rule 8 of the controlling agreement to designate the assembling point of these employes and that it was not subject to penalty for so doing. Rule 8 with its title is as follows:

'RULE 8. STARTING POINT

Employes' time will start and end at an assembling point designated by the employer.'

This rule is clear and definite and on its face extends to the Carrier the unqualified right to at any time designate the assembling point of the employes. In equally clear and definite terms it declares

that at the designated point the time of the employes shall start and end. There is no ambiguity in the rule.

If the clear terms of the rule are not to be allowed to control a limitation thereon must be found elsewhere in the Agreement.

It is to be implied by other provisions of the Agreement, particularly Rule 30, that Employes shall have a headquarters, but nothing is found the effect of which is to say that the headquarters and the assembling point for work must be the same. To say here that they must be the same would be to add to and change the terms of the Agreement. No citation is necessary to support the statement that this is not a proper function of the Division.

In Award 4527 a claim somewhat similar to this one was before the Division. There by the Statement of Facts the Employes contended under a rule similar to the one here (Rule 34 of that agreement) that the Carrier could not without penalty designate an assembling point other than the one where the members of a 'crew normally are required to report for work.' The claim was denied.

No limitation has been found in the Agreement which would justify an interpretation of Rule 8 other and different from the meaning therein expressed."

They again submitted a dispute to the Third Division, NRAB, on June 3, 1955, involving Rules 30 (Bulletins) and Rule 8 (Assembling Points). This dispute was decided by Award No. 8290 of the Third Division on March 28, 1958, in which the Board expressed its opinion with respect to Rule 8 as follows:

"The Carrier's insistence upon the qualification noted in the Chief Engineer's letter appears to rest upon its fear that the Organization seeks to evade the determination in Award 5886 involving the same parties. That Award turned upon an interpretation of Rule 8. Compliance with Award 5886 is not before us, however. A sustaining award on the present claim does not rest upon an interpretation of Rule 8, and is not to be construed as deciding the issue in the previous case."

It is the duty of the Third Division to interpret the rules of an agreement and not to change or re-write them.

The Third Division has by its Award No. 5886 interpreted Rule 8 as it is to be applied to employes of The Belt Railway Company of Chicago represented by the Brotherhood of Maintenance of Way Employes, when in its Opinion of Board in that Award, it said:

"RULE 8. STARTING POINT

Employes' time will start and end at an assembling point designated by the employes.

This rule is clear and definite and on its face extends to the Carrier the unqualified right to at any time designate the assembling point of the employes." (Emphasis ours.)

This interpretation of the Third Division was not changed by its Award No. 8290 or by any other duly authorized or recognized procedure.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner in this case contends that the Carrier has violated the basic contract by designating an assembly point for the incumbents of three positions different from the headquarters point advertised by the respective bulletins.

The Carrier contends that it has the right to designate the assembling point in accordance with the provisions of Rule 8, which is quoted below:

"RULE 8. STARTING POINT

Employes' time will start and end at an assembling point designated by the employer."

The identical issue was presented to this Board in Award 5886 involving the same parties. Commenting on Rule 8 in that Award, the Board stated:

"This rule is clear and definite and on its face extends to the Carrier the unqualified right to at any time designate the assembling point of the employes. In equally clear and definite terms it declares that at the designated point the time of the employes shall start and end. There is no ambiguity in the rule.

If the clear terms of the rule are not to be allowed to control a limitation thereon must be found elsewhere in the Agreement.

It is to be implied by other provisions of the Agreement, particularly Rule 30, that Employes shall have a headquarters, but nothing is found the effect of which is to say that the headquarters and the assembling point for work must be the same. To say here that they must be the same would be to add to and change the terms of the Agreement. No citation is necessary to support the statement that this is not a proper function of the Division.

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No limitation has been found in the Agreement which would justify an interpretation of Rule 8 other and different from the meaning therein expressed."

The only distinction between Award Number 5886 and the case now before us is that in the former, the organization demanded overtime pay as a penalty, whereas in the matter now pending, the Board is asked to direct the Carrier to discontinue the practice and designate Maintenance of Way Shop Clearing Yard as both assembly point and headquarters. To do that which the Petitioner urges, would be tantamount to re-writing Rule 8, which we have no authority to do.

The Board has taken into consideration the brief and the many awards presented to it, but is unable to find anything contained therein which would justify it in ignoring Award 5886. In the interest therefore of the doctrine of "stare decisis" and relying on 5886, we must deny the claim.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.