

Award No. 13687

Docket No. CL-13865

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5266) that:

(a) The Carrier violated and continues to violate the Agreement when, effective December 19, 1960, it abolished the last remaining Group 3 position at the Springfield, Illinois Freight Warehouse and unilaterally assigned the duties of the Group 3 position to Group 1 employees.

(b) That the Group 3 position shall now be re-established, the Group 3 duties returned to Group 3 employees, and Lee B. Range be compensated for any wage loss resulting from the Carrier's action, beginning with August 22, 1961 and continuing each day as long as the violation exists.

EMPLOYEES STATEMENT OF FACTS: Prior to December 19, 1960, the Gulf, Mobile & Ohio Railroad Company employed in its Freight Warehouse at Springfield, Illinois, 2 regularly assigned Group 1 employees, 1 regularly assigned Group 3 employee and one or more Group 3 employees who were not regularly assigned. On December 19, 1960, Agent J. C. Buscher abolished the last remaining regularly assigned Group 3 position in the warehouse and advised the occupant of the abolished position that he would thereafter work only on Monday of each week until business picked up. Concurrent with the abolishment of the last remaining regularly assigned Group 3 position, Agent Buscher unilaterally assigned the duties of the abolished position to the regularly assigned Group 1 employees, except on Monday of each week when one or more Group 3 employees, not regularly assigned, were called to work and performed the Group 3 duties. There have been occasions since December 19, 1960 when the services of these not regularly assigned Group 3 employees were utilized on more than one day each week.

Several weeks after December 19, 1960, Division Chairman C. E. Bailey, in conference with Agent Buscher, reached a verbal understanding to the effect that the abolishment of the last remaining regularly assigned Group 3 position at the Springfield, Illinois freight warehouse and the assignment of the duties of the abolished position to Group 1 employees was within the proper application of Rule 66 of the Agreement.

Mr. Lee B. Range, the occupant of the abolished Group 3 position, in

Rule 66 that "it is not the intent of the rule that it shall be applied in such a way that it would result in the necessity of employing two individuals (one Group 1 employe and one Group 3 employe) where only sufficient work for one position exists". The Brotherhood's request that claimant be paid or employed when there is no work for him to perform would not only be contrary to what the parties specifically agreed to avoid, but it is also contrary to what prudent men would agree to do.

(Exhibits not reproduced).

OPINION OF BOARD: Immediately prior to December 20, 1960, the Carrier's freight warehouse force at Springfield, Illinois consisted of three employes— a Warehouse Foreman, a Checker and a Trucker. The first two of these employes held Group 1 positions and the Trucker held a Group 3 position—all of these positions being subject to the Clerks' Agreement. An additional employe was used infrequently to relieve any of the above regularly assigned employes when they were off duty for any reason, and also when extra help was needed.

As the result of a decline in freight activity at the subject warehouse, effective with the close of the business day on December 19, 1960 the Carrier abolished the Trucker position and assigned the remaining trucking work to the Group 1 employes at the warehouse. Since Monday was a heavy day, however, the Trucker (Claimant Range) was called in to work each Monday, and also on other days whenever the Carrier considered that the tonnage justified use of a Trucker for eight hours or a major portion thereof. The Carrier states that except on Monday, the necessary trucking work averaged about three hours per day. The evidence discloses that during the period of December 20, 1960 through July 31, 1962, Claimant Range performed trucking on 142 of the 413 warehouse working days.

The contention in this claim is that the Carrier violated the Agreement by abolishing the Group 3 Trucker position and assigning the work thereof to Group 1 employes. Petitioner contends this transfer of work was in derogation of Claimant Range's seniority rights. The positions here involved are in the same seniority district but there are separate seniority rosters for Group 1 and Group 3.

Rule 66 of the Agreement reads:

"Clerks shall not be required to perform manual labor, such as trucking, icing cars and similar work ordinarily performed by unskilled labor, except by agreement. Exceptions to this rule may be made at specified points, to avoid unnecessary hardship in applying the rule, since it is not the intent of the rule that it shall be applied in such a way that it would result in the necessity of employing two individuals (one Group 1 employe and one Group 3 employe) where only sufficient work for one position exists."

The exception stated in the foregoing rule is applicable to the subject case. This exception clearly indicates that Group 1 employes may be required to perform trucking and other manual labor when there is insufficient work to justify employing a Group 1 and a Group 3 employe. In the present case, there is insufficient trucking work to keep a Trucker occupied even half time. Under Rule 66 the Carrier is therefore entitled to assign trucking duties to the two Group 1 employes, to abolish the Group 3 Trucker position, and to call in the Claimant Trucker for such days as trucking work is needed for

eight hours or a major portion thereof. The Claimant's standing on the Group 3 seniority roster cannot be used to frustrate the application of the clear language of Rule 66, including the noted exception therein.

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 of the parties 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 25th day of June 1965.