

Award No. 13975

Docket No. CL-14668

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5476) that:

1. Carrier Violated the Clerks' Rules Agreement at St. Paul, Minnesota when it called furloughed employees to perform Transloader work at the Freight House and then removed them from that assignment to perform mail sorter work at the Union Depot.

2. Carrier shall now be required to compensate employee F. Morrow for one (1) hour at the overtime rate of Transloader Caller for November 14, 1962.

3. Carrier shall now be required to compensate employee E. Senske and F. Morrow for four (4) hours each at the overtime rate of Transloader Caller for November 9, 1962.

EMPLOYEES' STATEMENT OF FACTS: This dispute is companion to another dispute involving the abolishment of positions in the Transload Freight Forwarding Department, Seniority District No. 29, St. Paul, Minnesota and the use of furloughed employees with regularity to perform the transload freight forwarding work previously performed on those positions, which was submitted to the Board under date of October 31, 1963, as yet undocketed, and identified by the Employees as case GL-5453.

Employees E. Senske and F. Morrow are furloughed employees in Seniority District No. 29 at St. Paul, Minnesota.

On November 9, 1962 employees Senski and Morrow were called to perform transloader work at the freight house and performed such work until approximately 12:30 P. M. They were then removed from the assignments for which called and sent to the Union Depot, which is in close proximity to the freight house, to perform mail sorter work and performed mail sorter work from 12:30 P. M. to 4:30 P. M.

rules, therefore, there is absolutely no basis for the instant claim and we respectfully request that it be denied.

The Carrier would point out that the work of handling transloader freight at St. Paul and the work of handling mail at St. Paul is all within the same class, i.e., non-clerical, and is all within the same seniority district. What the employees are attempting to establish through the instant claim, therefore, is that the Carrier may not use its employees to perform the same class of work within the same seniority district to the extent of 8 hours per day, however, the Carrier submits that there is no schedule rule or agreement which in any way supports the employees position in this regard, but to the contrary, utilization of employees to the extent described above is entirely proper and in accordance with schedule rules.

The Carrier submits that it is readily apparent that by the instant claims the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held by the Third Division, as well as by the other three Divisions and the various Special Boards of Adjustment, that your Board is not empowered to write new rules or to write new provisions into existing rules.

(Exhibits not Reproduced)

OPINION OF BOARD: This claim turns on whether Section 1 and/or 5 of the Memorandum of Agreement of September 14, 1956 resulting from the transfer of transload freight forward business from Minneapolis in Seniority District No. 26 to St. Paul in Seniority District No. 29, forbids the handling of mail by employees assigned to the transloader work at St. Paul. Sections 1 and 5 read:

"Section 1. It is agreed that resulting from the transfer of transload freight forwarding business from Minneapolis, Minnesota to St. Paul, Minnesota, effective on or about September 15, 1956, there will be established at St. Paul Minnesota effective that date, the following '5-day' positions assigned Monday through Friday:

One (1) Assistant Foreman	AFT-2
One (1) Check Clerk	CCT-24
One (1) Caller	FCT-48

"The above positions will be bulletined to all employees in Seniority District No. 26 and employees in Seniority District No. 29. Copies of the bulletins will be mailed to all furloughed employees in Seniority District No. 26. Preference will be given to applications from employees in Seniority District No. 26. Employees from Seniority District 26 awarded these positions will transfer with their seniority from Seniority District No. 26 to Seniority District No. 29.

"In the event an employee at Minneapolis is displaced through the exercise of seniority, by reason of abolishment of positions involved in the handling of transload freight at Minneapolis and his displacement does not take place until after the assignments are made at St. Paul in connection with the three positions listed above, that employee displaced at Minneapolis may, if he possesses sufficient fitness and ability, exercise his seniority to displace a junior Minneapolis employee or a St. Paul employee assigned to one of the three positions listed above. However, such exercise of seniority will not be permitted after October 15, 1956."

"Section 5. All or any number of the employees assigned with a 4:00 am starting time for the purpose of handling transloader business may, during their regular tour of duty, be used intermittently to perform freight handler work at St. Paul except these employees will not be used intermittently with the forces at Prior Avenue and they will not be used in the handling of mail."

Employees argue that Section 1 the 1956 Agreement intends to confine employees assigned to the positions established under that Section to the performance of the transload work. Their argument about the words in Section 5 "assigned with a 4:00 am starting time," while not sharply defined in the record, appears to be that the reference to starting time was a way of defining the positions at the time the Agreement was written, but applied to the positions of those who were assigned to the transloader work even if the starting time of the positions was changed. Claimants in this case started work at 8 am.

Carrier argues that there is no restriction in the basic Agreement or in the 1956 Agreement on the assignment of the employees involved to mail handling in the same seniority district. Carrier argues that Section 5 of the 1956 Agreement is by its terms applicable only to certain employees who have a 4:00 am starting time.

Employees fail to support with an evidence their argument that Section 1 of the 1956 Agreement intended to restrict the assignment of work to the positions it established. Considered as favorably as possible from the point of view of Employees' argument, Section 5 can at most be considered ambiguous; it was incumbent on Employees to prove by sound evidence in the record that the meaning they ascribe to the Section was the one intended by the parties. No such proof is in the record. We find no evidence in the record that Carrier violated the Agreement as claimed and we will deny the Claim.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1965.