

Award No. 600

Docket No. 620

2-FEC-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

FLORIDA EAST COAST RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: (a) Claim for pay for all carmen, carmen helpers and carmen apprentices for all time lost between May 7, 1937, and November 22, 1937, account the New Smyrna Beach car department being worked in violation of Rules 6 and 16 of the agreement.

(b) Claim for pay for all carmen, carmen helpers and carmen apprentices for all time lost between May 24, 1937 and **October 24**, 1937, also between May 23, 1938 and **October 2**, 1938, account the Bowden car department being worked in violation of Rules 6 and 16 of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Between the dates referred to in the above claim of employees, the car department forces at New Smyrna Beach and Bowden were worked five days per week over a spread of seven days per week by means of staggering. The working schedule was arranged by management so that all employees who were required to work on overtime days (Sundays and holidays) were laid off during the regular week days to make up the time which was in direct violation of Rule 6 of the agreement.

POSITION OF EMPLOYEES: It is the position of the employees that it is not permissible under the provisions of Rule 16 of the agreement to work employees forty hours per week over a spread of fifty-six hours, or seven days per week and that the respective bulletins posted over the signatures of the supervision at New Smyrna Beach and Bowden and listed herein as exhibits numbered 1, 2, 3, 4, 9, and 10 are contrary to this rule. Rule 16 of the agreement reads in part as follows:

"When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week, before reducing the force; or, when mutually agreed between the General Committee and the Management, the hours may be reduced to thirty two (32) hours per week, for a specified time. Any emergency work done in the shops on days when the shops are closed because of the application of this rule, will be divided between all the employees in their respective departments, as nearly equally as possible."

Rule 6 reads as follows:

When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time. At points where a sufficient number of employees are worked, men will

It was not until a conference between Mr. R. G. Smith, general chairman carmen and Mr. R. B. Hunt, superintendent motive power and machinery, on May 24, 1939, that claim was made in the form in which it was submitted and it was coupled with a claim covering the summer of 1938.

In the 1938 claim, the working schedule was put into effect after the men at Bowden expressed their desire to work the same schedule that was worked in 1937 and no grievance was filed in regard to it and it was not until a conference between Mr. R. G. Smith, general chairman of carmen and Mr. R. B. Hunt, superintendent motive power and machinery, on May 24, 1939, that a claim was made and the general chairman of carmen made the claim without any grievance having been filed or any handling as required by Rule 27.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Rule 16 of the existing agreement reads in part as follows:

"When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) hours per week, before reducing the force;
* * *"

Rule 6 requires that:

"When it becomes necessary for employes to work overtime, they shall not be laid off during regular working hours to equalize the time. At points where a sufficient number of employes are worked, men will not work two (2) consecutive Sundays; Holidays to be considered as Sundays. Records shall be kept of overtime worked, and men called with the purpose in view of distributing overtime as nearly equally as possible."

While Rule 16 permits reduction of hours to forty (40) per week, before reducing the force, in order to reduce expenses, it is reasonable to expect any schedule arranged for a forty (40) hour per week assignment will be such as to provide that all men affected shall be treated alike, otherwise any exceptions should be mutually agreed to through conference between the parties.

The evidence presented in the record shows violation of the rules of agreement; however, this Division is unable to determine the extent of the monetary loss to employes, and this remains a matter of determination between the parties to the dispute.

AWARD

Claim of employes sustained. The question of compensation shall be determined and disposed of by the parties to this dispute.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated as Chicago, Illinois, this 27th day of March, 1941.