

Award No. 974
Docket No. 902
2-CCC&StL-MA-'43

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 54, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)

THE CLEVELAND, CINCINNATI, CHICAGO AND
ST. LOUIS RAILWAY
(THE NEW YORK CENTRAL RAILROAD CO. LESSEE)

DISPUTE: CLAIM OF EMPLOYEES: That Machinist Committee Chairman J. C. Gold be paid his average piece work earned rate while in conference with the shop management, from 2:00 P. M. to 4:00 P. M. February 4, 1943, under the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. Gold is employed as machinist at Beech Grove locomotive shops, his regular working hours being from 8:00 A. M. to 12:00 Noon and from 12:30 P. M. to 4:30 P. M. He is the duly elected chairman of the shop committee of the machinists' organization at Beech Grove shops, and, while acting as machinists' committee chairman, spent two hours, from 2:00 P. M. to 4:00 P. M. on February 4, 1943, attending conference in office of superintendent shops, locomotive department, Beech Grove shops, relative to a grievance which had been presented to the committee for handling. Mr. Gold works in shop as a machinist on a piece work basis, approximately 100 per cent of the time worked, and his average earned piece work rate is at least \$1.50 per hour. He was compensated for time spent in conference on February 4, 1943, at his hourly rate which is 96 cents per hour. The controlling agreement is dated effective October 1, 1923.

POSITION OF EMPLOYEES: We take the position that Mr. Gold should be paid his average earned piece work rate for time spent attending conference with local officials, based on Rule 32 of the controlling agreement, which is herewith quoted in pertinent part:

"Rule 32. Should any employee, subject to this agreement, believe he has been unjustly dealt with, the case shall be taken to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representative.

All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen. . . ."

4. PRACTICE IN EFFECT ON OTHER NEW YORK CENTRAL PROPERTIES IS THE SAME AS THE BIG FOUR PRACTICE.

Under the rules in effect on the New York Central Railroad, Michigan Central Railroad, Boston and Albany Railroad, Indiana Harbor Belt Railroad and Chicago Junction and Chicago River and Indiana Railroad, payments for time lost attending conferences between local officials and local committeemen are on the basis of the basic hourly rates.

It must be apparent to the Board that one New York Central property could not have a more liberal practice in respect of such a matter than any other New York Central property.

While these other properties are not involved in this dispute, their practice is cited here merely to demonstrate that payment on the hourly basis is generally recognized as proper allowance for committeemen when holding conferences with local officials during working hours.

5. THE NATIONAL RAILROAD ADJUSTMENT BOARD, SECOND DIVISION, SHOULD DENY THE EMPLOYEES' REQUEST.

As indicated in its opening statement, the carrier believes the claim herein presented should be dismissed on the grounds that there does not exist a dispute over which the Board can properly assume jurisdiction.

Should the Board elect to adjudicate the claim, however, the employees' request must be denied for these reasons:

1. Rule 32 under which the claim is made does not provide for compensation on the basis of the "average rate received for straight time for the preceding pay period."

2. Compensation claimed in this instance applies to conditions set forth in Piece Work Rule 3 and cannot be extended to apply to Rule 32 cases except by mutual agreement between the parties hereto.

3. To sustain the claim would be contrary to the long established practice in applying Rule 32.

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.

As an original matter, the contention of the employees—that under Rule 32 of the controlling agreement it must have been contemplated that committeemen would be paid for time spent in conferences with management such sums as they would have earned if they had remained at work—might be deemed to possess much merit.

But the evidence of record discloses the following: that Rule 32 has been operative since October 1923; that the piece-work system, upon the earnings of which reliance is now being placed, has been in effect since July 1924; that throughout this period "loss of time," as specified in the rule, has been construed and paid for on the basis of the prevailing hourly rates; and that not until about 19 years after piece work had been installed was protest made against this method of payment and the "average piece work earned rate" requested.

In these circumstances the established practice must be deemed to reflect the intent and understanding of the parties. There is no basis for finding a violation of the existing agreement; if relief is considered necessary, it must be secured through the process of negotiation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1943.