

Award No. 1168

Docket No. 1104

2-St.LSF&T-MA-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Machinist Thomas M. Tolbert was unjustly discharged on June 14, 1946, and that accordingly the carrier be ordered to reinstate him to all service rights with pay for all time lost since said date.

STATEMENT: The above question was submitted to the Second Division of the National Railroad Adjustment Board by the above referred to organization in ex parte form, a hearing thereon was held, and the Division is now in receipt of request from the employees that the case be withdrawn.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: J. L. Mindling
Secretary**

Dated at Chicago, Illinois, this 4th day of December, 1946.

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Saturday, December 9, 16 and 30, 1944; Saturday, January 13, 20 and 27; Saturday, February 3, 10 and 17; Saturday, March 17 and 31; Saturday, April 7, 14, 21 and 28; Saturday, May 5, 12, 19 and 26; and Saturday, June 2, 9, and 16, 1945, a total of 32 hours at the rate of \$1.04 per hour.

6. H. L. Menke, machinist, Saturday, September 23 and 30; Saturday, October 7, 14, 21 and 28; Saturday, November 4, 11, 18 and 25; Saturday, December 2, 9, 16, 23 and 30, 1944; Saturday, January 6, 13, 20 and 27; Saturday, February 3, 10, 17 and 24; Saturday, March 3, 10, 17, 24 and 31; Saturday, April 7, 14, 21 and 28; Saturday, May 5, 12, 19 and 26; and Saturday, June 2, 9, and 16, 1945, a total of 39 hours at the rate of \$1.04.

7. E. T. Deippiessi, machinist, Saturday, September 23 and 30; Saturday, October 7, 14, 21 and 28; Saturday, November 4, 11, 18 and 25; Saturday, December 2, 9, 16, 23 and 30, 1944; Saturday, January 6, 13, 20 and 27; Saturday, February 3, 10, 17 and 24; Saturday, March 3, 10, 17, 24 and 31; Saturday, April 7, 14, 21 and 28; Saturday, May 5, 12, 19 and 26; and Saturday, June 2, 9 and 16, 1945, a total of 39 hours at the rate of \$1.04 per hour.

8. Wm. Mate, machinist inspector, Saturday, September 23 and 30; Saturday, October 7, 14, 21 and 28; Saturday, November 4, 11, 18 and 25; Saturday, December 2, 9, 16, 23 and 30, 1944; Saturday, January 6, 13, 20 and 27; Saturday, February 3, 10, 17 and 24; Saturday, March 3, 10, 17, 24 and 31; Saturday, April 7, 14, 21 and 28; Saturday, May 5, 12, 19 and 26; and Saturday, June 2, 9 and 16, 1945, a total of 39 hours at the rate of \$1.09 per hour.

9. Tony Fillipo, machinist, helper, Saturday, September 23 and 30; Saturday, October 7, 14, 21 and 28; Saturday, November 4, 11, 18 and 25; Saturday, December 2, 9, 16, 23 and 30, 1944; Saturday, January 6, 13, 20 and 27; Saturday, February 3, 10, 17 and 24; Saturday, March 3, 10, 17, 24 and 31; Saturday, April 7, 14, 21 and 28; Saturday, May 5, 12, 19 and 26; and June 2, 9 and 16, 1945, a total of 39 hours at the rate of \$.79 per hour.

and that the carrier be accordingly ordered to make the said adjustments.

EMPLOYEES' STATEMENT OF FACTS: The employees listed above, herein-after referred to as the claimants, were regularly employed by the carrier during the period of September 23, 1944, to June 18, 1945, at the 27th Street Diesel and Locomotive shops, Chicago, Illinois.

These claimants were required to check in and out on their own time during the aforesaid period for which they were not allowed one hour for having been in the service at the end of the week, and this is affirmed by copy of letter submitted dated October 20, 1944, identified as Exhibit A. However, the practice of requiring these claimants to check in and out on their own time was disestablished effective the week of June 18, 1945.

This dispute has been handled in accordance with the applicable agreement effective April 1, 1935, up to and including the highest designated carrier officer to whom such matters are subject to appeal, and such officer has declined this claim.

POSITION OF EMPLOYEES: Within the meaning of Rule 57, in part reading—

“When employees are required to check in and out of their own time”

it is a fact that these claimants were required to check in and out on their own time during the period in dispute, namely: between September 18, 1944, and June 18, 1945, and this is clearly established by the admission contained in Exhibit A.

painting a locomotive, but there is no mention as to what rate shall be used for painting a wrecking derrick. The current agreement not having any specified rate for painting a wrecking derrick, the rate that should be paid is the one that the carrier has been paying and the employees have been accepting over the period that this agreement has existed. Clearly, then, past practice of what the parties have agreed as the rate that should be paid is controlling. There is a dispute between the parties as to what the past practice has been. If it has been the past practice to pay a freight car painter when he painted a wrecking derrick at the rate provided for locomotive painters then the claim will be allowed; if, however, the past practice has been to pay a freight car painter when he painted a wrecking derrick the freight car painters rate, the claim will be denied. The claim will be remanded for settlement in accordance with this award."

The employees have long been aware of the interpretation and practice with regard to the application of the present Rule 57, and they have not sought to change it by negotiation; it is the position of the carrier that in no other way can a change now be effected.

Evidentiary of the fact the employees are and have been aware of the practice is the following quoted from General Chairman Hunter's letter of May 19, 1945:

"The basis for your position is that it is past practice and that employees who might be late were docked. The Supervisors may use their own discretion as to whether they dock an employee reporting late and we would not intercede in this matter. We agreed it is past practice and are making no claims prior to the dates of making grievances as pointed out in my letter of January 22, 1945, and March 19, 1945."

The carrier maintains that the complained of interpretation has been established as controlling by long practice which has been acknowledged by the employees and that, therefore, there is no dispute that this Board may decide.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Rule 57 is unambiguous and provides for the payment of the so-called "grace hour" when employees are required to check in and out on their own time.

The fact that there had been exceptions made as to the application of this rule does not change its meaning.

There is a question of fact as to the employees mentioned in the dispute having been required to check in and out on their own time which should be resolved on the property.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1946.