

Award No. 1217

Docket No. 1160

2-KCS-FT-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (FEDERATED TRADES)**

KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the carrier be ordered to restore to employees the checking in and out payment allowance stipulated in the current agreement and reimburse them for the amounts improperly deducted from their take-home pay retroactive to February 1, 1947.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 16, 1934, the carrier did not pay mechanics, apprentices and helpers of the six shop crafts for checking in and away from work on their own time, but the carrier did agree to and paid these employees one minute for each hour actually worked, a maximum of one hour in the month from August 16, 1934, to April 1, 1945.

In revision of the rules, effective April 1, 1945, the carrier did agree to and paid the aforesaid employees, including coach cleaners, one minute for each hour actually worked each month for checking in and out and making out service cards on their own time until payment thereof was cancelled by the carrier in letter dated October 31, 1946, copy of which is submitted and identified as Exhibit A. However, upon protesting this action of the carrier, by the system federation, the carrier thus extended the payment of said checking in and out time until February 1, 1947.

The collective agreement effective April 1, 1945, is controlling.

POSITION OF EMPLOYEES: As will be noted from the above facts, it is submitted that the carrier management and its employees of the six shop crafts were bound by and subject to a rule, reading—

"At the close of each month one minute for each hour actually worked during the month will be allowed employees for checking in and out and making out service cards on their own time, with a maximum of one hour allowance for the month."

from August 16, 1934, to April 1, 1945, but in the meanwhile the identity of this rule was changed from Rule 39 to Rule 38. It is obvious that this provision established as a condition of employment checking in and out and making out service cards on their own time and for which service, whether these employees worked 60 hours or 180 hours each month, they were paid therefor in the amount of sixty minutes or one hour at their pro rata rates.

Here again is a rule providing for payment of additional time for work performed outside regular hours; but clearly there is nothing in Rule 68 requiring the railway company to permit a blacksmith helper to prepare or build fires outside regular hours—the rule simply states what the carrier will allow if it requires the employee to do that work outside regular hours. If done within regular hours, the additional allowance is not made. The same thing applies to the checking in and out rule.

And there are other provisions in the shopcraft schedule covering differentials which employees receive if they are used on different or additional work. But the only way the employees qualify for the increased or additional rate of pay is to perform the work contemplated by such increased rate—and there is no schedule requirement that the carrier permit its shopcraft employees to perform additional work so that they can receive the additional pay.

Rule 38 relied on by the organization contains no language which makes it mandatory or compulsive that the carrier allow employees to check in and out and make out service cards on their own time. It simply states in effect that if this is done on the employees' own time they will be paid therefor, and that is exactly what carrier is doing.

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 were given due notice of hearing thereon.

The rule requires the allowance will be made when the employees check in and out and make out service cards on their own time. When not required to do so on their own time, no allowance under the rule is justified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.