

Award No. 1227

Docket No. 1162

2-Kenn. Copper-FT-'48

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. 155, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (FEDERATED TRADES)**

**KENNECOTT COPPER CORPORATION, UTAH
COPPER DIVISION**

DISPUTE: CLAIM OF EMPLOYEES: 1—That the rules of the agreement dated June 1, 1944, more particularly Rules 5, 10 and 22, are being violated by the Kennecott Copper Corporation, Utah Copper Division in:

- (a) Refusing to compensate employees at the rate of time and one-half time rates for service performed on the sixth consecutive work day; i.e., Saturday, and
- (b) Refusing to compensate employees at the rate of double time for service performed on the seventh consecutive work day; i.e., Sunday, and
- (c) Arbitrarily assigning employees in the Roundhouse to work a forty-eight (48) hour staggered assignment, covering a fifty-six (56) hour weekly operation, and
- (d) Arbitrarily requiring the employees in the backshop and steel car shop to lay off every other Monday commencing October 22, 1945.

2—That in consideration of the aforesaid, the Kennecott Copper Corporation, Utah Division, be ordered to:

- (a) Compensate employees at the rate of time and one-half time for each sixth day worked; i.e., Saturdays commencing October 20, 1945, less such straight time compensation paid to each employe, and
- (b) Compensate employees at the rate of double time for each seventh day worked; i.e., Sundays commencing October 21, 1945, less such straight time compensation paid to each employe, and
- (c) Cease and desist assigning employees in the roundhouse on a so-called "staggered" weekly assignment, and
- (d) Compensate each employe arbitrarily required to lay-off during any regular work day, Monday through Saturday, a full

jected by employer and union accepted Rule 5 whereby premium compensation was required only for work performed on the sixth and seventh consecutive work days of the work week.

4. On the day the contract was signed, May 25, 1944, union, together with employer, expressly assured the Railway Labor Panel that the contract reflected the then existing conditions and would not result in any wage adjustment. But the construction of the contract upon which the union now insists would entail increased compensation for the same number of hours worked.

5. The agreement of June 1, 1944, did not alter past practice, but on the contrary was an express declaration that past practice was not changed.

6. For seventeen months after the contract became effective the parties construed and applied that contract in accordance with employer's contention, and union without objection or protest accepted and adopted that construction.

7. The agreement does not support the union's contentions.

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 employees 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.

It is clear from the contentions made by the respective parties as set forth in the record of this case and contentions made by the parties at the hearing before the Division with referee present that the dispute arises over the meaning and application of the agreement reached through mediation.

In view of the contentions of the parties concerning mediation understandings, it is our view that one or both of the parties should apply to the National Mediation Board for a hearing under the provisions of Section 5, Second, Railway Labor Act, where it is believed a more intelligent finding may be made than would result from an award of this Division which lacks information to verify or deny understandings each side says it had when the rules were mediated.

AWARD

Case remanded in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of January, 1948.