

Award No. 1266

Docket No. 1198

2-SP-(Tex&La)-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman J. R. Campbell was unjustly deprived of the right to work the first seven hours of his own shift, beginning at 7 A. M. on September 2, 1947, and that accordingly the carrier be ordered to reimburse him for said hours at his regular pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: At Ennis, Texas, the carrier maintains a large car repair and car inspection force, the car repair forces are regularly assigned to one eight (8) hour shift, from 7:00 A. M. to 12:00 Noon and 1:00 P. M. to 4:00 P. M., and the car inspection forces are regularly assigned to three shifts, 7:30 A. M. to 3:30 P. M., 3:30 P. M. to 11:30 P. M., and 11:30 P. M. to 7:30 A. M. The force working on the car repair track and the car inspection forces hold common seniority.

On September 1, 1947, Carman J. R. Campbell, hereinafter referred to as the claimant, was regularly assigned on the car repair track shift, 7:00 A. M. to 12:00 Noon and 1:00 P. M. to 4:00 P. M., and was directed by the car foreman not to report for his regularly assigned car repair job the following day, but to report to the train yard for service as car inspector on the 3:30 P. M. to 11:30 P. M. shift, to work John Reyter's assignment, who was laying off that date.

The agreement effective March 1, 1943, is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier in causing the claimant to lay off from his regularly assigned shift, 7:00 A. M. to 12 Noon, 1:00 P. M. to 4:00 P. M., September 2, 1947, violated the provisions of Rule 8, reading in pertinent part—

“When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time.”

There is no question of doubt but that the carrier's action was for one reason, and that was for the purpose of equalizing the overtime, as the claimant could have worked his regular assignment from 7:00 A. M. to 12:00

ment and practices thereunder. When the claim went off the property it was found that the carrier had been asked to pay Campbell for two jobs at one time. That claim was dropped and an entirely new claim originated and appealed to the Second Division, National Railroad Adjustment Board. The carrier insists that the claim it is called upon to defend before the Second Division, National Railroad Adjustment Board, has not been handled in the usual manner on the property and is not subject to appeal to the National Railroad Adjustment Board.

It is affirmatively stated that all documentary evidence referred to herein has been presented to the general chairman.

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.

The claim was made within the time as provided by Rule 32 of the current agreement and is here presented on the same basis as on the property.

Claimant did not work on September 2, 1947 during the following hours of his regular assignment: 7 A. M. to 12 noon; 1 P. M. to 3:30 P. M. This, under the facts as disclosed by the record, was in violation of the first paragraph of Rule 8 of the parties' agreement, which rule it was the carrier's duty to carry out. Claimant is entitled to be compensated for 7½ hours of his regular assignment on September 2, 1947, on a pro rata basis.

AWARD

Claim sustained for 7½ hours on a pro rata basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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