

Award No. 1713
Docket No. 1582
2-P&LE-URRWA, CIO-'53

**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:

**THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.
THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY
THE LAKE ERIE AND EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: (1) That the Carrier violated the controlling agreement when it established extra board of employees without proper agreement between the parties.

(2) That accordingly, the carrier be ordered to cease and desist from establishing extra list of employees.

STATEMENT OF FACTS: There is an agreement in effect between the parties effective May 1, 1948, amended September 1, 1949, copy of which is on file with the Second Division of the National Railroad Adjustment Board, and is by reference hereby made a part of this statement of facts.

The carrier shortly after September 1, 1949, established an extra board of car inspectors at all points on the system without negotiations with the duly accredited representatives of the employees, the controlling agreement does not have any provisions for the establishing of extra boards.

Reference is made in the forty-hour rules effective September 1, 1949, providing for conditions under which certain work could be performed by extra or unassigned men if such extra boards had been established by agreement.

Prior to November 14, 1930, the controlling agreement did not provide for extra boards, nor for any division of time for employees of the car department.

Effective November 14, 1930, until the revision of the agreement dated May 1, 1948, numerous temporary side agreements were entered into seeking to provide work for as many men as possible on the share the work plan, including establishing extra boards in an effort to provide work. However, all such agreements were a matter for negotiations between the parties.

When the agreement effective May 1, 1948, was agreed to by the parties, all and any such understandings, etc. pertaining to in any manner establish-

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 organization contends carrier is violating its agreement with them by establishing Extra Boards of employes without any agreement between the parties. It asks that carrier be ordered to cease doing so. The practice complained of is that of Foremen carrying and using lists of employes not regularly assigned. Regular and relief positions are not involved for admittedly carrier recognizes it must establish as many such positions as is consistent with its work requirements. What is involved is primarily temporary vacancies on such positions, caused by the illness, personal affairs, etc., of the occupants thereof, together with unassigned and extra work. Carrier contends that it has always been the practice to have this work performed by men from extra lists.

The evidence establishes that such a practice has been in effect on this carrier for many years, as such, and not by reason of any rule, agreement or understanding. The rules of the Forty Hour Week Agreement, adopted by the parties effective September 1, 1949, did not abrogate this practice but, in fact, authorized its continuance. See Rules 1 (n) 5; 1 (o); 1 (p); 1 (q); 3 (b); and 3 (c) thereof. As stated in Rule 1 (o): "To the extent extra . . . men may be utilized under . . . practices, . . .".

7 When a contract is negotiated, and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself.

It should be understood that the Forty Hour Week Agreement, as such, does not create the right to establish extra lists, and to utilize the men therefrom, but does, when that right existed under existing practices, preserve it.

In coming to the conclusion that carrier has the right to establish and use extra lists it should be understood that we in no way pass upon the question of the manner in which carrier may use men listed thereon. That issue is not before us and is a question upon which we expressly do not pass.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1953.