

Award No. 1740

Docket No. 1626

2-AT&SF-SM-'54

**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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Coast Lines)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly changed compensating these Water Service Employees:

H. F. Adams	E. D. Ferris	V. McClothlin	W. J. Sells
M. Alberico	H. E. Flannery	R. Moore	C. E. Shelley
W. Behm	A. Heuck	F. Resendes	H. Spino
N. E. Dillman	G. W. Johnson	C. M. Ridel	E. R. Symmes
James Dinsmore	T. W. Kelley	J. C. Ringgold	R. A. Tate
D. R. Drechmann	J. Kennedy	S. W. Rogers	K. K. Walton
C. M. Everett	J. S. Lynes	W. E. Savage	L. H. Wolfe

from the monthly salary basis to the hourly rates of pay effective August 1, 1949.

2. That accordingly the Carrier be ordered to:

a). Re-establish the monthly salaries that were applicable to each of these aforesaid employees as of July 31, 1949 less the deduction of \$2.45 per month effective September 1, 1949, plus the increases accruing to each of them, namely:

H. F. Adams	R. Moore
M. Alberico	F. Resendes
W. Behm	C. M. Ridel
N. E. Dillman	S. W. Rogers
C. M. Everett	W. E. Savage

from home station over night, which meets the requirements and intent of Rule 13, it is difficult to attempt to visualize the reasoning of the complainant organization.

When the referred to basis of payment was changed—August 1, 1949—water service department forces consisted of:

Albuquerque Division		37 men
Arizona	"	18 men
Los Angeles	"	28 men
Valley	"	10 men
Terminal	"	6 men

Abandonment of the Arizona division as such—also effective August 1, 1949—resulted in 3 men being absorbed by the enlarged Los Angeles division.

Currently water service department forces consist of:

Albuquerque Division		39 men
Los Angeles	"	40 men
Valley	"	13 men
Terminal	"	7 men

Despite the fact the 40-hour work week—established September 1, 1949—reduced the regular work days by 20% (equivalent to 19.8 full time employes), the carrier has fully met its needs with the reduced employe output without increasing its over-all forces and with very little overtime service required or performed.

The instant claim lacks support of the rules agreement and merits nothing other than a denying award, and we trust your Honorable Board will so decide the issue.

The carrier is uninformed as to the arguments the organization will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the organization's ex parte submission or any subsequent oral arguments or briefs placed by the organization in this dispute.

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.

This dispute is presented here by the Sheet Metal Workers of System Federation No. 97, in behalf of twenty-eight (28) employes in carrier's water service department. The organization contends carrier improperly changed these employes, effective as of August 1, 1949, from a monthly salary to an hourly rate of pay.

It is first claimed that the jurisdiction of this Division, as fixed by the Railway Labor Act, does not include water service employes. No place in

the Act are water service employees referred to as a class of employees of which any one of the four Divisions has exclusive jurisdiction. It is true, as carrier contends, that solely because these claimants are represented by the Sheet Metal Workers' organization, a class of employees of which the Act gives this Division jurisdiction, would not give this Division jurisdiction of their disputes. Jurisdiction of the several Divisions is not based on representation. We must therefore look to the Agreement to ascertain just what are the duties of a sheet metal worker and whether or not these claimants come within that class.

Rule 83 provides, in part, as follows:

"Sheet metal workers' work shall consist of . . . pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; . . . the bending, fitting, cutting, threading, brazing, connecting and disconnecting of . . . water, . . . steampipes; . . . and all other work generally recognized as sheet metal workers' work."

Rule 14 (f) refers to " * * * water service mechanics, helpers and apprentices * * *."

There are undoubtedly many employees in the Water Service Department of this carrier who are performing this type of work.

As stated in the preamble of the parties agreement: "This Agreement shall apply to employees of these Carriers who perform work outlined herein in the . . . Water Service Department under jurisdiction of the Operating Department."

Carrier in its presentation refers to claimants as employees of the Sheet Metal Workers' craft working in its Water Service Department and this we think is their proper classification. This Division, having jurisdiction of Sheet Metal Workers' disputes, has jurisdiction of these claimants and authority to settle their disputes. See section 3. First (h) of The Railway Labor Act, "Second Division."

Carrier next contends the claim was not appealed here within the time fixed by the parties' agreement. Carrier says its highest designated officer to consider appeals denied this claim on June 5, 1950 and that no further action was taken thereon until this appeal was lodged here by a notice of intention to appeal dated March 17, 1953.

Rule 33 (b) of the parties' agreement provides in part: "Should the employe himself or the General Chairman be dissatisfied with the decision rendered by the highest designated officer and further appeal is desired, the case may then be handled in accordance with the Railway Labor Act, providing such appeal is made within ninety (90) days after date of decision."

It is not the provisions of this rule that gives claimants the right of appeal to this Division of the Board, but the provisions of Sec. 3 First (i) of the Railway Labor Act. Consequently any period of delay, no matter how long, in handling a grievance or dispute by appeal to this Board, after it has been denied by the highest officer on the property authorized to handle it, will not, in the absence of a showing by carrier that it has been or will be injured, damaged or prejudiced thereby, defeat it as there is no provision in the Railway Labor Act limiting the time within which it must be done. However, the Act contemplates that claims and disputes coming under its provisions shall be handled in a prompt and orderly manner and until Congress acts in regard thereto there is nothing in the Act to prevent the parties from entering into a reasonable provision for that purpose. We think the ninety-day provision in the parties' agreement provides a reasonable length of time in which to do so. In view of the foregoing it is apparent

the appeal to this Board from carrier's denial of the claim by its chief operating officer designated to handle disputes was not taken in time and that, because thereof, it should be dismissed.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1954.