Award No. 1802

Docket No. 1666

2-AT&SF-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—(Eastern Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the following Claimants were unjustly dealt with when they were detained for forty-five (45) minutes after their regular quitting time and searched by Carrier's Special Agents on January 30, 1953:

C. C. Miller	E. Allen	G. Woods
J. Jones	J. L. Brooks	A. Kubik
E. Sumpter	James Neely	E. Florez
M. Gee	Mary E. Deloney	V. Hartman
Ramon Gomez	John Gamble	M. Fields
S. Coleman	V. Velesck	D. Nagy
	G. Bilboa	

2. That accordingly the carrier be ordered to discontinue such unlawful and discriminatory handling of employes and compensate the aforesaid claimants each in the amount of forty-five (45) minutes at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The above named claimants (hereinafter referred to as the claimants) are regularly assigned at the 21st Street Coach Yard, Chicago, Illinois, on the 7:00 A. M. to 3:30 P. M. shift. The claimants, male and female, are employes of the carmen's craft. On January 30, 1953, after the claimants checked out they were forced to remain on carrier's property and submit to a searching and patting down by Carrier Special Agents Duffy and Gamuf: No company property was found on the claimants and resulted in their being retained by instructions of the carrier on carrier property for 45 minutes after regular bulletined hours. The dispute was handled on the property for adjustment with the result the carrier declined to adjust the dispute. The agreement effective August 1, 1945, as subsequently amended, is controlling.

(the fact that four employes admitted attempting to leave company premises on January 30, 1953, with company property concealed on their persons) is knowingly, by such tactics, practicing a form of harrassment, which is not only inimical to the maintenance of good labor relations but is a deliberate flouting of the law in that in seeking to force the Second Division to make determination of a false issue, the organization is taking a long step in the direction of nullifying the established-by-law purpose of the various Divisions of the National Railroad Adjustment Board, i. e., the **honest** determination of questions involving **honest** differences of opinion, based upon **facts, not assumptions or misrepresentations.**

It is alleged by the organization that the named claimants were detained for forty-five (45) minutes after their regular quitting time on January 30, 1953, and that having been so detained they each should be paid forty-five (45) minutes at the time and one-half rate. **This allegation is untrue. The named claimants were not detained. Any statement to the contrary is false.** No payment is due the claimants for service performed on January 30, 1953, which has not already been made.

In conclusion, the carrier is setting forth below, its opinion as to the reasons why it considers that the instant dispute is not a proper one, but if the Board should nevertheless assume jurisdiction, that it could have no alternative but to dismiss the claim in its entirety because it is based upon a tissue of unwarranted assumptions and misrepresentations.

If the Board should assume jurisdiction of this dispute, the claim should be dismissed in its entirety, because:

1. The organization has refused to make any effort to establish the truth or the facts in connection with this dispute, i. e.,

   (a) The claimants were not unjustly dealt with.

   (b) The claimants were not detained 45 minutes after their regular quitting time on January 30, 1953.

   (c) The claimants were not searched by carrier's special agents on January 30, 1953.

   (d) The claimants were not unlawfully handled on January 30, 1953.

   (e) The claimants were not given discriminatory handling on January 30, 1953.

   (f) The claimants have been properly paid under the provisions of the applicable agreement for any compensation due them on January 30, 1953.

The carrier is uninformed as to the arguments the organization will advance in their ex parte submission and accordingly reserves the right to submit additional facts, evidence and argument as it may conclude are necessary to reply to the organization's ex parte submission or any subsequent oral arguments or briefs submitted 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.

Carrier has a policy of long standing of requiring Special Service Department Representatives to make periodical observations of employes leaving

company premises at quitting time for the purpose of preventing and reducing pilferage of company property. On Friday, January 30, 1953, at 3:30 P. M., Special Agent Gamauf and Assistant Special Agent Duffy were stationed at the 21st Street entrance of carrier's 21st Street Yard, at Chicago, Illinois, for that purpose. The record shows that 326 employes of all crafts passed through the entrance on this occasion, the 19 claimants (carmen) were among them. The claim is that they were delayed 45 minutes and they demand pay at the overtime rate under Rule 7 (a), current agreement, which provides:

> "For continuous service, after regular working hours, employes will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour for forty (40) minutes service or less."

The organization contends that claimants were compelled to remain on the premises and submit to a search and patting down by the carrier's special agent. No company property was found on the claimants.

Carrier asserts that the named special agents stationed themselves at the 21st Street entrance to prevent by observation of employes the possible pilferage of property belonging to the carrier. It asserts that the operation was completed at 3:50 P. M. During this period, those carrying bundles or packages were requested to show their contents. If it appeared that any appeared to be concealing something on their person, they were requested to exhibit that which they concealed. Four employes, including three carmen who are not included as claimants, were found in possession of company property. Carrier positively asserts that claimants were not detained, none were searched, and none were patted down. It is stated that not more than twenty were requested to open packages or exhibit concealed property and that others, including these claimants, were not detained at all.

The organization produced approximately 20 statements by employes that they were "searched" by the special agents. They do not state the facts which are alleged to constitute a search. The word "search" has many meanings and the conclusion that one was "searched" could vary from a casual observation to the most meticulous examination of one's person. Statements made in such general terms are not very helpful to the Board in resolving cases of this kind.

The submission of the organization does not establish that claimants performed service for the carrier as that term is used in Rule 7 (a). The carrier has the right to protect its property and there is an obligation on the part of employes to assist in so doing. The record discloses that some employes were somewhat inconvenienced but it does not indicate they performed service. If the carrier exceeded its rights and infringed upon the personal rights of these claimants, it is a matter where the law and not the collective agreement affords the remedy. The claim made does not come within any reasonable interpretation of "continuous service after regular working hours" as used in Rule 7 (a).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1954.