

Award No. 1955

Docket No. 1786

2-B&M-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector S. Raffaele was unjustly dealt with when the Carrier declined to compensate him for performing service outside of his regular bulletined hours on May 7th and 8th, 1953 and thereafter.
2. That accordingly the Carrier be ordered to additionally compensate S. Raffaele in the amount of a minimum of one hour at straight time rate for all service performed by him outside of his regular bulletined hours on May 7th and 8th, 1953, and thereafter when required to perform service for forty (40) minutes or less.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Raffaele (hereinafter referred to as the claimant) is employed as such by the carrier with bulletin hours of 10:00 P. M. to 6:00 A. M.

This claimant on reporting for work at 10:00 P. M. was required to punch in on the time clock at the so called cement building on the outside edge of Yard 9, where there is maintained a time clock, lockers, tools, toilets, and foremen's office. This is headquarters for the car inspectors who work out of this building into the yards. After punching the clock, the claimant receives orders, if any, from the foreman and then proceeds to Yard 8. In order to get to Yard 8, he has to walk around cars on various tracks in Yard 9; also, at times wait for moving cars from the hump, or to the hump to pass; he then crosses the high line (main line tracks) and arrives at the hump end and on the edge of Yard 8, where he has to meet the same conditions as in Yard 9 in order to arrive at a shanty which is used for eating, obtaining information, making out records, etc. From here he proceeds to cover his regular assignments and do any other work required of him as a car inspector.

At 6:00 A. M. or later, whether the claimant was relieved by another man or required to stop work wherever he might be in Yard 8, he then had

The carrier was required to put a stop to the unnecessary excessive overtime and in doing so merely ordered the claimant to refrain from punching the time clock, which was vigorously objected to. Immediately the members of the organization represented by the petitioner notified the carrier that it was without authority to do so. It should be understood that it is the carrier's prerogative to either have a man punch a clock or not punch a clock. This immediately eliminated the excessive and numerous cases of irregular overtime of one hour due to the fact that the men had previously been arriving at the time clock and punching out three or four minutes after their regular quitting time in order to get an additional one hour's pay at the mechanic's rate.

For your Honorable Board's information, the petitioner was offered a solution to the problem at hand. The carrier offered the carmen's organization the option of agreeing upon a reasonable walking time arbitrary, in order to correct the situation. This was refused by the carmen's organization.

Please take note the carrier still is willing to settle this dispute by agreeing to a reasonable walking arbitrary, and feels that if this case was remanded accordingly that all concerned would be satisfied and benefit therefrom. This should convince your Honorable Board of the carrier's good faith and sincerity in seeking a harmonious settlement of this case in fairness to all.

The petitioner feels that the men should be permitted to indefinitely continue to punch the time clock, the primary reason for doing so being to acquire the timely overtime. It most certainly is not reasonable for the carrier to be compelled to abide by the demands of the petitioner as claimed in this case.

As the claimant was not mistreated, not underpaid, paid for all work properly performed, rules support the carrier's action, the claim is unreasonable and should be disallowed account claim is not supported by any rules of the agreement.

As supported by the foregoing, the claim should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 4 (a) of the Agreement allows time and one-half on the actual minute basis with a minimum of one hour for continuous service performed after regular bulletin hours. It had been the procedure in the past for the car inspector to leave the location of his work in the yard when his assignment was completed, or upon being relieved, and walk to the car inspectors' headquarters. The walking time averaged five (5) to seven (7) minutes due to distance and yard obstructions. There he would return his tools and light to his locker; complete his service card when he was unable to do so on the job; make out a report of Inspection and Air Brake Tests and finally punch out at the time clock. The carrier, believing this procedure subject to abuse and conducive to the filing of unwarranted overtime claims, on May 5, 1953, ordered claimant and all other carmen on the 10:00 P. M. to 6:00 A. M. shift to stop punching the time clock at the end of the shift and to quit work upon being relieved by their respective relief men who presumably arrive at the point of work at or prior to the bulletined quitting time.

While it does not appear from the record the exact time that claimant was relieved on the dates of claim, it would appear from claimant's position in this case and by virtue of the fact that he filed time claims, that while he may have been relieved at 6:00 A. M., the above acts were not completed until some minutes after 6 o'clock A. M., the end of the eight hour shift.

Carrier concedes that if the relief be not timely afforded or when the employe is otherwise held by his assignment until after 6:00 A. M., that he would be entitled to overtime compensation provided by the aforesaid Rule 4 (a). Carrier relies on Rule 46, appearing in full in the parties' submissions, supra, and contends that claimant did not perform any services after his regularly scheduled quitting time except "checking out" as permitted under the rule.

The scope of the term "check out" as appearing in Rule 46 is in issue. This rule must be read and reconciled with Rule 4 (a), supra, which provides compensation for service performed after regular bulletined hours.

It is not realistic to consider the making out of the Inspection and Air Brake Test reports, Form MX-13, a required duty, as anything but a service to the carrier, compensable under Rule 4 (a) under the appropriate circumstances. In that carrier requires such reporting at a point other than the work location or the yard, the walking time to perform that service is as much a part of his work day as walking the length of a train to procure that information in the first place. As to the time consumed in putting away tools, it is at most a matter of seconds unless accompanied by a clothes change and wash up which are matters solely for the employe's benefit and non-compensable in absence of agreement.

This brings us to the point of making out service cards and compensation for such services. If rendered after quitting time, is expressly covered in the Agreement and is compensable on the actual minute basis at pro rata rates. We find that this phase of the post-quitting time duties only was intended to be covered by the term "check out" as used in Rule 46.

While it may be said that the time consumed in making out the aforementioned form MX13 is insignificant, it is nevertheless service to the carrier. To ignore this item would be to say that the carrier could add other and possible substantial duties under the guise of "checking out" contrary to the plain dictate of Rule 4 (a).

AWARD

Claim sustained as to stated dates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1955.