

Award No. 2092

Docket No. 1803

2-A&WP-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 126, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**ATLANTA & WEST POINT RAILROAD—The Western Railway of
Alabama**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current working agreement Carman S. S. Boney is entitled to be additionally compensated at time and one-half coach carpenter's rate for all services performed outside of bulletined hours subsequent to and including August 11, 1952.

2. That accordingly the Carrier be ordered to reimburse this employe for each lunch period worked from the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Under date of August 4, 1952 Bulletin 3601 was placed on the carrier's bulletin boards abolishing the position of a car inspector with assignment 7:30 A. M. to 3:30 P. M., Tuesday through Saturday. The employe holding this position was Carman (Car Inspector) S. S. Boney, with seniority dating of July 17, 1922.

On August 9, 1952, Carman Boney elected to exercise his seniority on position of passenger car repairer in the carrier's Montgomery shops. This passenger car assignment was 7:30 A. M. to 4:00 P. M., Monday through Friday, with a lunch period from 12:00 noon to 12:30 P. M. Carman Boney began this new assignment at 7:30 A. M., August 11, 1952.

On this same date (August 11, 1952) the local carrier officials assigned Carman (Passenger Car Repairman) Boney to work his lunch period at the passenger station.

Carman Boney was compelled to work his lunch period each day of his regular assignment (Monday through Friday) subsequent to August 11, 1952 until November 13, 1953 inclusive, without compensation.

This dispute has been handled from bottom to top with all officials designated to handle such matters in line with the agreement without satisfactory adjustment.

"All services performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

This rule covers work before or after completing assignment and has no bearing on instant claim.

Rule 7 is captioned "Overtime and Calls," and Paragraphs (d) and (e) read:

"(d) Employees required to work during the lunch period shall be allowed an equal length of time to procure lunch period to expiration of sixth hour.

(e) Employees shall not be required to render service for more than two hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to 30 minutes."

Carrier complied literally with Paragraph (d). Note also there is no penalty involved for violating this rule.

As to (e), that rule has no application whatever to this case. That rule covers a situation where you keep a man on after completion of day's work, in which case if you keep him on for two hours you have to give him a meal period of 30 minutes.

For the reasons outlined above carrier requests this claim 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 6(a) of the effective agreement is as follows:

"All services performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

Rule 7(d) is as follows:

"Employees required to work during the lunch period shall be allowed an equal length of time to procure lunch prior to expiration of the sixth hour."

On the dates in question the claimant worked eight hours within an eight and one-half hours' span. He received eight hours' pay for each of the dates in question and was allowed time for lunch before the expiration of the sixth hour. He did not perform service for which he was not paid.

The rules have been interpreted in line with the carrier's position as borne out by a record of many years of undisputed practice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1956.

DISSENT OF LABOR MEMBERS TO AWARD No. 2092

The majority's statement that "On the dates in question the claimant worked eight hours within an eight and one-half hours' span" is an admission that the claimant was required to perform service "outside of bulletin hours."

The further statement of the majority that "He (claimant) received eight hours' pay for each of the dates in question and was allowed time for lunch before the expiration of the sixth hour" is an admission that claimant was not compensated in accordance with the requirements of Rule 6(a) of the effective agreement. The fact that the carrier was permitted under Rule 7(d) to require claimant to work during his lunch period by allowing him an equal length of time to procure lunch prior to expiration of the sixth hour did not relieve the carrier from compensating claimant for the service at the rate of time and one-half as prescribed in Rule 6(a); therefore the award of the majority is erroneous.

Charles E. Goodlin
R. W. Blake
T. E. Losey
Edward W. Wiesner
George Wright

•