

Award No. 2105
Docket No. 1979
2-CMS tP&P-FT-'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:

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Federated Trades)**

DISPUTE: CLAIM OF CARRIER:

(a) That Rule 49 of the Five Craft Schedule and Rule 69 of the Electrical Workers' Schedule are only applicable when the employees covered by those schedules are required to check in and out and make out service cards on their own time.

(b) That the Carrier may, unilaterally, without negotiations with or concurrence of any employee representative or organization, eliminate the requirement for such employees to check in and out and make out service cards on their own time by:

- (1) Discontinuing the requirement, or
- (2) Having employees check in and out and make out service cards within their assigned hours

and that if the requirement for checking in and out and making out service cards on their own time is eliminated by either of these methods, the payment provided for in the above referred to rules would not be applicable.

CARRIER'S STATEMENT OF FACTS: Generally speaking, employees covered by the five craft schedule or by the electrical workers' schedule on the property of this carrier are required to check in and check out and to make out service cards on their own time. Because of being required to do these things, they are paid an arbitrary allowance under Rule 49 of the five craft schedule and Rule 69 of the electrical workers' schedule, both of which are identical and read as follows:

"At the close of each week one (1) minute for each hour actually worked during the week will be allowed employees for checking in and out and making out service cards on their own time."

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 case, brought before the Second Division of the National Railroad Adjustment Board by the carrier, has been attacked by the organization on the grounds of lack of jurisdiction. Basis of the charge is that the case was not properly handled on the property prior to the time it was progressed to this Division.

The record reveals that the interpretation of the rule involved has been questioned for many years. Further, the carrier made known to the employees' representative that this question was going to be progressed to the National Railroad Adjustment Board by a carrier's ex parte submission. The employees' representative made no complaint as to this action.

Inasmuch as the issue here has been a live one for some time and the action by the carrier was taken with full knowledge and without complaint by the organization, we, of the Board, hold that the question of the meaning of Rule 49 of the Five Craft Schedule and Rule 69 of the Electrical Workers' Schedule is a question properly before this Board and that Section 3, "First" (i) of the Railway Labor Act has been substantially complied with. Section 2, Second of the Railway Labor Act was not violated. Section 6 of the Act is not applicable.

As to the merits of the case—the rules in question are identical and read:

"At the close of each week one (1) minute for each hour actually worked during the week will be allowed employes for checking in and out and making out service cards on their own time."

This is clearly an arbitrary provision for the payment for effort expended by the employes when such is done on their own time. The rule does not require the carrier to have the checking in and out and the making out of service cards on the employe's own time. If it is done on the carrier's time the employes receive pay for time actually consumed by these efforts.

Also see Award No. 1217 of this same Division.

AWARD

Claim sustained.

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.