

Award No. 2520

Docket No. 2280

2-IC-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT A. F. of L.-C. I. O. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Illinois Central Railroad Company improperly denied Car Inspectors P. Fleming, S. J. Papiez, P. J. O'Malley, P. Rodriguez, H. Ravesloot, G. W. Smit, J. S. Kubon, M. W. Hovanes, E. Johansen, E. Boettger, A. Rosenberger, J. A. Perko, F. M. Wlodek, J. J. Garvis, S. J. Martinez and Carmen Helpers R. Diaz, F. Tillman, E. Clark, S. J. Cabala and M. Bridges employment on one of their days involved in their regular assigned work week of 40 hours consisting of 5 days of 8 hours each, namely Saturday, December 25th, 1954.

2. That under the current agreement the Illinois Central Railroad Company improperly denied Car Inspectors P. Fleming, S. J. Papiez, E. Johansen, E. Boettger, A. Rosenberger, J. Nesiewicz, W. J. Chandler, P. Rodriguez, H. Ravesloot, G. W. Smit, J. S. Kubon, J. J. Garvis, S. J. Martinez and carmen helpers S. J. Cabala, F. Tillman, E. Clark and R. Diaz employment on one of their days involved in their regular assigned work week of 40 hours consisting of 5 days of 8 hours each, namely Saturday, January 1st, 1955.

3. That accordingly the Illinois Central Railroad Company be ordered to make these Claimants whole by additionally compensating each of them in the amount of 8 hours at the time and one-half rate respectively on the dates of December 25th, 1954 and January 1st, 1955.

EMPLOYES STATEMENT OF FACTS: The Illinois Central Railroad Company, hereinafter called the carrier, made the election at Markham Yards, Chicago, Illinois, to regularly create and designate a work week of 40 hours consisting of 5 days of 8 hours each with 2 consecutive days off in each 7, to which the above named employes of the carmen's craft were subject, hereinafter referred to as the claimants, and this is confirmed by the submitted copies of memorandums identified as Exhibits A and B.

for rotating Sunday and holiday work among employees on 7-day assignments. (3) In any case the status of 7-day 'continuous service' positions was altered by the 40-Hour Week Agreement. Under the latter, positions 'necessary to the continuous operation of the carrier' were not obligated to work seven days under any and all circumstances. (4) **The 40-Hour Week Agreement established no guarantee of minimum hours or days of work in agreements where none previously existed.** (5) **Having found no compelling evidence of such a guarantee before the advent of the forty-hour, five-day work week, we find none now.** (6) **We therefore conclude that the instant claim merits denial.** (Emphasis added)

As there has been no violation of the agreement and no basis for the employees' claim, request is made by this carrier that it be accordingly 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 employees 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.

The issue presented by this claim is identical to that decided by our Award No. 1606, which involved the same parties. The award is consistent with our subsequent awards upon the same issue and there are no rules or agreement provisions which justify a reversal thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARDS Nos. 2520 and 2521

The finding of the majority to the effect that there are no rules or agreement provisions which justify a reversal of Award No. 1606 is not in accord with the facts.

Rule 1 (a) of the current agreement requires that "a work week of 40 hours shall consist of five days of eight hours each" and the Forty Hour Week Agreement by its very title is a guarantee of forty hours work per week for the employees governed thereby.

The instant Holidays came within the regularly assigned forty hour week of the claimants and by refusing to work the claimants on such Holidays the carrier deprived them of part of their regularly assigned work week. The majority findings ignore the carrier's duty under the terms of the agreement to work on such Holidays employees assigned to work-weeks that include such Holidays.

The schedule agreement, as amended September 1, 1949, recognizes and preserves the rules, rate of pay, and working conditions of the claimants and stands as a protest against a repetition of the error in Award No. 1606.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink