Award No. 2842
Docket No. 2508
2-T&P-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the Current Agreement the Carrier improperly compensated Carman L. A. LaRue, at straight time rate for service performed on June 23 and 24, 1956.

2. That accordingly the Carrier be ordered to additionally compensate the aforementioned Carman in the amount of four (4) hours pay at the applicable hourly rate for each date shown above.

EMPLOYES' STATEMENT OF FACTS: Carman L. A. LaRue, hereinafter referred to as the claimant, was regularly assigned on Marshall Rip Track on 7:00 A.M. to 4:00 P.M. shift, working Monday through Friday with Saturday and Sunday designated as his rest days. The claimant worked his regular assignment Monday, June 18, Tuesday, June 19, and Wednesday, June 20. He was then required by the carrier to fill temporarily the job of Car Inspector O. E. Prior, who was off on his two week vacation beginning June 20, 1956. Prior's job was assigned in train yard 3:00 P.M. to 11:00 P.M. Wednesday through Sunday with Monday and Tuesday designated as his rest days. The claimant was required to temporarily fill Prior's job Wednesday June 20, Thursday, June 21, Friday, June 22, Saturday, June 23, and Sunday, June 24, a total of seven straight days at the straight time rate. The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that under Rule 2 (n) and (o) reading in part:

"(n) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate. . ."

From what has been said it necessarily follows that this 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 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.

Claimant LaRue held a regular assignment on the repair track Monday through Friday. On Wednesday, June 20, 1956, being the junior man available, he was assigned to double over and fill the car inspector job of Mr. Prior who was on vacation. The inspector job had a work week Wednesday through Sunday. LaRue continued to work the inspector's job, according to its terms, through Sunday, and took the regularly scheduled Monday and Tuesday off.

Claim is now made for time and one-half for LaRue's services performed on Saturday and Sunday, June 23 and 24, on the ground that Rule 2 (n) and (o), which provides premium pay for work in excess of forty (40) hours or five (5) days in a work week, has been violated.

In support of the claim, the employes cite Second Division Award No. 1708. That award, which was dated September 17, 1953, withdrew the claim of R. E. Garcia, who was paid under circumstances similar to the present. It is contended that the Garcia case and two others like it establish a practice which the parties are now required to perpetuate.

On its part the carrier cites sustaining Award No. 2616 of this Division dated September 12, 1957, in a dispute between the same parties. It is argued that this award has effected the practice followed by the parties in applying the vacation agreement, at least as much as did Award No. 1708, and that it was decided later after the meaning of the vacation agreement had become more settled.

In determining the meaning of an ambiguous phrase it has generally been held that the practice of the parties may be considered as showing the meaning which the parties have themselves applied. It has also been repeatedly held that a practice which violates the clear meaning of a rule should not be followed in contravention of such rule.

During the period when the forty hour week and the vacation agreements were being construed and connected with the basic agreement, this Board adopted those awards which cut through the conflicts by holding that the conditions of a job attach to the job and not to the occupant of it.

In harmony therewith, we are of the opinion that LaRue moved from his assignment to Prior's assignment and must accept the conditions of the job and the work week fixed for it.

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 May, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2842

The current agreement was jointly adherred to until the instant dispute arose due to the fact that the carrier suddenly took the position that an award rendered on another railroad nullified the joint application of the instant rules. The majority in attempting to "harmonize their findings with the carrier's contention completely ignored the agreement governing the employment of the claimants and we are therefore constrained to dissent.

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

J. B. Zink