

Award No. 3187

Docket No. 2884

2-SLSW-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspectors M. L. Welch and J. R. Hobbs, East Saint Louis, Illinois, were unjustly dealt with when Carrier declined to compensate them for performing service outside of their regular bulletined hours on July 28, 1955.

2. That accordingly the Carrier be ordered to additionally compensate Car Inspectors Welch and Hobbs for one hour each for the service performed on that date.

DISPUTE: CLAIM OF EMPLOYES: 1...That under the current agreement Car Inspectors M. L. Welch and J. R. Hobbs, East St. Louis, Illinois, were unjustly dealt with when the Carrier declined to compensate them for performing service outside of their regular bulletined hours on July 28, 1955.

2. That accordingly the Carrier be ordered to additionally compensate Car Inspectors Welch and Hobbs for one hour each for the service performed on that date.

EMPLOYES' STATEMENT OF FACTS: Car Inspectors M. L. Welch and J. R. Hobbs, hereinafter referred to as claimants, were regularly employed by the carrier on July 28, 1955, assigned by bulletin to work in the East St. Louis train yard from 4:00 P. M. to 12:00 Midnight.

The recognized point for going on and coming off duty for all car inspectors in the East St. Louis Yard is the car inspectors' shanty located in the west end of the yards. A time clock is maintained approximately 250

the concept theretofore existing of what constituted work. No intention is evidenced that portal to portal pay was a concept to be incorporated into the Forty-Hour Work Week Agreement.

"The question posed appears to be one of first impression before the Board. In our opinion, the time claimed is more similar to travel time which is paid for as work only when the controlling agreement specifically so provides. Awards 6400, 6651. Award 1802, Second Division, has some application. It was there held that inconvenience and delay resulting from the observation of employes after the close of their tour of duty for the purpose of preventing and reducing pilferage of company property was not work within the meaning of the agreement.

"We conclude that time consumed in punching a time clock is a condition incidental to the employment and is not service, duties or operations within the meaning of the collective agreement in the instant case. No basis exists for an affirmative award."

Second Division Award 1802 (Referee Carter denied a claim of carmen that they should be paid overtime for allegedly being delayed 45 minutes checking out due to observation by special agents of employes leaving premises, with a view of reducing pilferage of company property. The Opinion, in part, was:

"The submission of the organization does not establish that claimants performed service for the carrier as that term is used in Rule 7(a). The carrier has the right to protect its property and there is an obligation on the part of employes to assist in so doing. The record discloses that some employes were somewhat inconvenienced but it does not indicate they performed service. If the carrier exceeded its rights and infringed upon the personal rights of these claimants, it is a matter where the law and not the collective agreement affords the remedy. The claim made does not come within any reasonable interpretation of 'continuous service after regular working hours' as used in Rule 7(a)."

In conclusion the carrier respectfully submits that the facts in evidence show that the claim is not supported by the rules and 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.

Parties to said dispute were given due notice of hearing thereon.

The statements by the claimants show that pay is claimed in this case for time required to walk to the inspectors shanty from the point of performing service and turning in reports and tools. The rules make no provision for pay for check-out time but only for service performed, so the claim is not supported by the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3187

The majority implies that the instant claim is for check-out time and is not compensable. The majority is ignoring the fact that the time claimed is for service actually performed outside regular bulletined hours and is compensable at the rate of time and one-half on the actual minute basis as provided in Rule 4-1. Thus the majority is in error in finding that the claim is not supported by the agreement.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner