

Award No. 3336
Docket No. 3125
2-P&LE-TWUOA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, A. F. of L.—C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY and
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

J. Stupka, Car Inspector has job #362 at Hillsville which works Mon. thru Fri. from 10:00 P. M. to 6:00 A. M.

On Friday night August 30, 1957, E. Sward, Foreman, four (4) hours before J. Stupka's starting time notified J. Stupka that his job at Hillsville would not work and that he was to report to the East Yard.

This is a violation of our agreement Rule 40, paragraph (b).

Management later claimed that J. Stupka could have reported at Hillsville worked at East Yard and finished at Hillsville.

The only thing that management did not tell the Organization was that F. Repasky was present when Foreman Sward made the call to J. Stupka and he never made such a statement to Mr. Stupka.

Since J. Stupka was not properly notified and as far as he was concerned his job at Hillsville had been cut-off on August 30, 1957, the Organization requests that J. Stupka be compensated eight (8) hours for this day.

EMPLOYEES' STATEMENT OF FACTS: This case was handled on the property of the carrier and is known as Case Y-65.

J. Stupka is a car inspector and an employe of the carrier.

In Awards 7223, 7224 and 7226 of the Third Division, the question at issue was identical in principle with that in Award 7166, which award was relied upon by the Board in sustaining the carrier's position in Awards 7223, 7224 and 7226.

CONCLUSION:

The carrier has shown that in each of the several seniority districts existant on this property car inspectors have always started and finished their assignments at their designated headquarters, irrespective of the fact that during the course of their assignments, these inspectors may be required to leave their headquarters and perform service at some other location within their seniority district. The claimant was properly advised that although there would be no inspection work required at his headquarters on August 30, 1957, there would be a need for his services in the East Yard at Youngstown, Ohio, both of these locations being included within the claimant's seniority district. The claimant did not choose to report for this assignment and of his own volition did not perform any service on August 30, 1957.

The carrier has also shown that the claimant was definitely advised that he could start and finish his assignment at his headquarters and that the organization has failed to furnish the necessary proof to substantiate its statement that the claimant was not so advised. Furthermore, claimant's loss of time was of his own choosing. He was duty bound to comply with the instructions given him, then if he believed there was a rule violation, which carrier emphatically denies, he could have filed a claim. Having taken matters into his own hands, which resulted in wage loss, carrier insists he should not now be made whole.

The carrier respectfully submits that the claim is absolutely **without** merit 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 as jurisdiction over the dispute involved herein.

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

Claimant Stupka held a regularly assigned car inspector position at Hillsville, 10:00 P. M. to 6:00 A. M., rest days Saturday and Sunday. On Friday, August 30, 1957 Foreman Sward telephoned claimant at home approximately four hours before the reporting time of his position and advised that claimant would be required to work in the East Yard since there was no work at Hillsville that night. There is a conflict in the evidence as to whether the Foreman also told the claimant he could start and finish his assignment at Hillsville, his headquarters point. This location and the East Yard are in the same seniority district. In any event, Stupka stated he would not work in the East Yard. He did not report for duty at any point on the date in question. Claim is made that carrier violated Rule 40(b) by

failing to give sufficient notice that claimant Stupka's job was being cut off on August 30.

The carrier was entitled to require claimant to work at other locations within the seniority district so long as he was permitted to go on and off duty at Hillsville, which was the location specified in the job bulletin. We find it unnecessary to resolve the conflict concerning whether Stupka was instructed or required to report directly to East Yard in the subject instance. If he was so instructed, he should have complied and taken the recourse provided in the agreement for any wrong felt to have been done him. Since he did not do this, he would not be entitled to relief from this Board even if the facts urged in his behalf were accepted.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October, 1959.