

Award No. 3455

Docket No. 3358

2-P&LE-TWUOA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when 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 EMPLOYES: On January 1, 1958, Car Inspector R. Cole's job was cut off due to the holiday. This job worked 11:00 P. M. to 7:00 A. M. This means that the position started December 31, 1957 and ended January 1, 1958.

At 11:00 P. M. on December 31, 1957, Car Inspector T. Amicone, from the East Yard was sent to Lansingville to fill R. Cole's job.

It is in violation of the agreement to cut off an employe on a holiday and then to use another employe from another location to perform the work.

For this reason the Organization requests that Car Inspector R. Cole be compensated eight (8) hours at the punitive rate for January 1, 1958.

EMPLOYES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-86.

That Car Inspector R. Cole held a regular advertised job at Lansingville and had been notified that this job was being cut off due to holiday.

That after being so notified this job did work on the holiday and was worked by Car Inspector T. Amicone.

That when this job was worked on the holiday Car Inspector R. Cole was entitled to work the job.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering the carmen, their helpers and

" * * * The claimant seeks payment for the work lost at the overtime rate apparently on the theory that if he had been called for the work it would have been done at that rate by virtue of the fact that the claimed dates were his rest days. While there is some differences in the awards of this Division, upon this point the better reasoning would seem to support those decisions allowing simply the pro rata rate. The overtime rule has no application to time not worked. See Awards 1771 1772, 1782, 1799 and 1825, Second Division. * * * "

When a similar issue was before the Third Division, the Board said in Award No. 3193:

" * * * In the absence of agreement to the contrary, the general rule is that the right to work is not the equivalent of work performed so far as the overtime rule is concerned. The overtime rule itself is consonant with this theory when it provided that 'time in excess of (8) hours exclusive of meal period on any day will be considered overtime.' The overtime rule clearly means that work performed in excess of eight hours will be considered overtime. Consequently, time not actually worked cannot be treated at overtime rate unless the agreement specifically provides. This conclusion is supported by this Division Awards 2346, 2695, 3049. * * * "

This same conclusion is supported by the following Third Division Awards 3232, 3376, 3251, 3271, 3504, 3745, 3277, 3770, 3371, 3375, 3837, 4073 and 4196.

CONCLUSION:

Carrier has shown that the claimant's position was cut off on the holiday in accordance with the applicable agreement. When work for a car inspector occurred, carrier fulfilled its obligation by calling the claimant for the work. The carrier, when it could not contact the incumbent, sent an inspector from the East Yard to perform the work which in no way violated the agreement.

Awards of various Divisions of the National Railroad Adjustment Board support the position of the carrier.

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.

On January 1, 1958, Car Inspector R. Cole's job was cut off due to the holiday. At 11:00 P. M. (December 31, 1957) it was decided to work claimants position.

Carrier contends that under Rule 3 (h) of the Agreement it has the right to reduce its forces on holidays. We are in accord with this contention.

The evidence in this case shows that on the night in question it was found that a Car Inspector would be needed. The Carrier attempted to locate the

claimant by telephone as well as the next man in seniority, neither being available, they arranged for an Inspector from the East Yard to work the position.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 2nd day of May, 1960.