

Award No. 3550
Docket No. 3356
2-P&LE-TWUOA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the Award was rendered.

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYES: The management and the organization negotiated an extra board rule. The organization feels that this rule is now being violated.

On January 4 and 6, 1958 regular men were absent from work for some reason or another. The Carrier blanked the jobs on these days.

The Organization takes the stand that Rule 48 (c)-1 is being violated as the extra board was created for this reason.

For this reason the Organization requests that Mr. Bacha, extra car inspector, be compensated eight (8) hours for Jan. 4 and eight (8) hours for Jan. 6, 1958 for not being called to fill position of regular employee off on these days.

EMPLOYEES' STATEMENT OF FACTS: That this case is from Youngstown, Ohio and is known as Case Y-84.

That Mr. Bacha is an extra car inspector and was available for work on the days that the regular employees were off.

That the Organization does have a rule, the rule is Rule 48 'Extra Boards' and this rule was violated when the Carrier blanked the job of the employee that was off on Jan. 4 and Jan. 6, 1958.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March

The basis of the claim is Rule 43. In its first paragraph that Rule deals with employees and provides for their compensation. The second paragraph reads as follows:

'Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.'

That guarantee runs personally to the incumbent of a position rather than impersonally to the job itself. That quite aside, **there is nothing in the Agreement which makes mandatory the filling of a position when its regular occupant absents himself as briefly as was the case here. * * *** (Emphasis added)

See also Awards 934 and 792 of the Third Division, National Railroad Adjustment Board.

CONCLUSION:

The carrier has conclusively shown that there was no necessity for filling the car inspector vacancy either on January 4 or 6, 1958, days on which the regularly assigned car inspector laid off of his own accord. The carrier has also shown that there was no violation of the carmen's agreement when this position was blanked. Conversely, awards of the National Railroad Adjustment Board have established that it is permissible for a carrier to refrain from filling vacancies such as those in question in this case.

Several awards of the National Railroad Adjustment Board have been cited in support of the carrier's position.

The carrier, therefore, respectfully submits that the claims are entirely devoid of merit and earnestly requests that same 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 employee 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.

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

The parties hereto agreed upon an Extra Board Rule, numbered 48, which provided in applicable part:

(C) Extra employees to be used as follows:

(1) When regular relief employees are off duty for any reason

(2) When extra work appears that has not been contemplated by the Carrier.

On the dates involved a regularly assigned car inspector reported off duty and carrier blanked the position on determining that there would not be sufficient work to warrant the use of an extra man.

The evident purpose of Rule 48 was to prescribe when employes from the extra board should be used instead of other employes,—not to restrict carrier in its right to blank positions when there was no need for them to be filled. This same issue was decided in well reasoned Award No. 3339 of this Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1960.