

Award No. 3582

Docket No. 3385

2-CofG-FT-'60

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:

CENTRAL OF GEORGIA RAILWAY COMPANY

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Federated Trades)**

DISPUTE: CLAIM OF CARRIER: 1. That Rule 48 of the Agreement of System Federation No. 26, Railway Employees' Department, A.F.L.-C.I.O. is applicable only when employees covered by this agreement are required by Carrier to check in and out and make out service cards on their own time.

2. That the Carrier may, without negotiation or concurrence of the organizations, discontinue requiring employees to check in and out and make out service cards on their own time; and that upon elimination of such requirement, the provisions of Rule 48 are no longer applicable.

3. That the matters covered in parts 1 and 2 of this claim are not barred by the moratorium provisions, Article VI, of the November 1, 1956 Agreement.

CARRIER'S STATEMENT OF FACTS: Agreement between the carrier and the employees of the shop crafts, System Federation Number 26, Railway Employees' Department, AFL-CIO, is effective September 1, 1949, as amended, and is on file with your Board and is hereby made a part of this submission by reference.

Rule 48 of this agreement reads as follows:

"PAY FOR CHECKING IN AND OUT

At the close of each week one (1) minute for each hour actually worked during the week will be allowed employees for checking in and out and making out service cards on their own time."

Under the provisions of Rule 48, employees in our shops and on repair tracks have been required by the carrier to check in and check out and make out service cards on their own time, for which they are allowed the arbitrary of one minute per hour provided by the rule. In addition, the various foremen have kept the time of the men under their jurisdiction.

The members of your Honorable Board are respectfully requested to deny the position of the carrier, thus upholding the employees' position.

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.

This claim was filed by the Carrier. Rule 48 of the controlling agreement declares:

"At the close of each week one (1) minute for each hour actually worked during the week will be allowed employees for checking in and out and making out service cards on their own time."

The Carrier gave prior notice that effective as of the close of the work day on November 30, 1958 it would discontinue use of the time clock system and thereafter would not require shop craft employees at any point to punch time cards, nor to make out work sheets or service cards on their own time. The Carrier further advised that the allowance provided in Rule 48 no longer would be applicable. It is contended in behalf of the employees that the Carrier is without authority to discontinue the allowance of one minute per hour actually worked. Various rules are cited to support the contention that this unilateral action is barred by the agreement.

Rule 48 requires the specified allowance when employees check in and out and make out service cards on their own time. The rule, as written, does not obligate the Carrier to have these duties performed on the employees' own time. Management is free to cease requiring employees to do this service on their own time, in which case there no longer exists any basis for the allowance provided in the rule.

Neither Rule 134 nor 135 of the controlling agreement is applicable in the instant case. The Carrier's action does not change any collectively bargained rates of pay. It does not alter Rule 48 in any respect. The moratorium provisions (Article VI) of the November 1, 1956 Agreement also are not applicable, since the disputed action does not make any change in the rate or amount of compensation payable for the functions specified in Rule 48. The Carrier has simply removed the conditions which call for the arbitrary payment specified in the rule.

The Organization has presented evidence to the effect that some employees were never required to check in and out on time clocks, since there were no time clocks at their locations, but that they nevertheless received the allowance specified in Rule 48. Whether the employees in question also were not required to fill out service cards on their own time is not indicated in the record.

Even if we assume that these employees were not required to perform any of the Rule 48 duties on their own time, however, the Carrier is not barred from abandoning the one minute per hour allowance for such employees. The rule conditions the payment of the allowance in language that is free of

any ambiguity. A practice to the contrary does not alter the clear meaning of the rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.