

Award No. 3786
Docket No. 3642
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone 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 EMPLOYEES: On August 18, 1958 Inspector DeVassie was off for some reason and his job was worked by another regular employe from another point. This is a violation of the Agreement, Rule 48 (c)-(1) as an extra man should have been used to fill Inspector DeVassie's job.

Since a regular man was used instead of an extra man the Organization requests that R. Shepas, extra car inspector, be paid eight (8) hours for August 18, 1958.

EMPLOYEES' STATEMENT OF FACTS: This case is from Youngstown, Ohio and is known as Case Y-115.

The organization does have a rule with the carrier to cover this situation and the rule is Rule 48, extra boards.

The carrier violated this rule when the carrier used a regular employe from another point as it meant one less employe working and it meant that one job was blanked on this day. An extra employe should have been used so that the job held by Inspector DeVassie would be filled properly.

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 carmen, their helpers and apprentices, (Car & Locomotive Departments), copy of which is on file with the Board and is by reference hereto made a part of these statement of facts.

POSITION OF EMPLOYEES: The carrier and the organization negotiated an extra board rule and this rule is not ambiguous and the carrier should be made to abide by this rule.

occupant of baggage-mail handler position at Central Station, Chicago, Illinois."

The Third Division denied the claim for one day's pay and in the opinion of the Board stated in part as follows:

"The question presented is this. If an employe of his own volition lays off for but a single day, is the carrier obligated by the Agreement to give the position and its pay for that day to another employe?

On reason and authority the answer is an emphatic 'NO.' Nothing could be gained by reviewing the conflicting awards. The question is settled by Award 934, and the well-reasoned opinion therein of the Honorable Frank M. Swacker, Referee. In that opinion, and the whole thereof, this Referee concurs * * *.

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

'Nothing herein shall be construed to permit the reduction of days for the employes 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 ours)

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

CONCLUSION:

Carrier has shown that there was no necessity to fill the car inspector vancancy at East Youngstown on August 18, 1958 created by a regularly assigned inspector laying off duty of his own accord. Further, the carrier has shown that the carmen's agreement does not obligate the carrier to fill every vacancy caused by such absence with an inspector from the extra list and that no violation of the agreement occurs when the carrier deems it advisable to blank that position.

Awards of the National Railroad Adjustment Board, including Award No. 3339 involving the same parties here involved, have definitely established that it is permissible for a carrier to refrain from filling vacancies such as that in question herein. Several awards involving this principle have been cited in support of carrier's position.

The carrier, therefore, respectfully submits that the claim is 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 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 Railroad 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 regularly assigned car inspector at Hubbard, Ohio, marked off duty until further notice. Carrier decided that the amount of work contemplated would not justify filling the vacancy and blanked the job for the day. During the shift the services of a car inspector were required at Hubbard and Carrier transported one of its inspectors to Hubbard from the Receiving Yard at Youngstown by jeep and returned him on the completion of his work at Hubbard. The Organization contends that claimant should have been called from the extra board under Rule 48 (c)-1 which requires that extra employes be used when regular or regular relief employes are off duty for any reason.

As held in Awards 3339 and 3550 of this Division, Rule 48 does not restrict Carrier in its right to blank positions when there is no need for them to be filled. As held in Awards 3458 and 3612, inspectors going on duty at one yard may be used in another yard within the seniority district without violating 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 23rd day of June 1961.