

Award No. 4164
Docket No. 4142
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman John Ambrose was unjustly dealt with when the Carrier worked junior Carman G. Leone eight (8) hours on Monday, September 5, 1960 in violation of the seniority rules and mutually agreed upon practice of cutting off the junior carmen on holidays when jobs are to be cut off on holidays.

2. That accordingly the carrier be ordered to compensate the aforesaid claimant eight (8) hours' pay at the punitive rate for Monday, September 6, 1960.

EMPLOYEES' STATEMENT OF FACTS: John Ambrose, hereinafter referred to as the claimant, is employed by the Pittsburgh & Lake Erie Railroad Company, hereinafter referred to as the carrier, as a car inspector (carman), in the Struthers, Ohio seniority district.

On Monday night of each week on the 10:00 P.M. to 6:00 A.M. shift at the West End Departure Yard, Struthers, Ohio there are normally two (2) car inspectors assigned, both being regularly assigned relief men, the claimant John Ambrose being one and Jack Loyd being the other car inspector.

For a three (3) week period, including September 5, 1960, Jack Lloyd did not work his assignment, having been temporarily assigned to work the vacancy occasioned by another car inspector being on his scheduled vacation. G. Leone, Car Inspector from the extra board was temporarily assigned to fill the vacancy caused by J. Lloyd temporarily working on another bulletined assignment. John Ambrose has a seniority date as carman of 1-5-50, G. Leone has a seniority date as Carman 5-2-50.

Awards of the various Divisions of the National Railroad Adjustment Board have been cited in support of carrier's position.

Carrier respectfully submits, therefore, that the instant claim is entirely without merit and 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 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.

The Claimant, John Ambrose, whose seniority date is January 5, 1950, held a regular relief Car Inspector's assignment from 10:00 P.M. to 6:00 A.M.—Thursday through Monday—with Tuesday and Wednesday as relief days—at the Carrier's Gateway Yard, Struthers, Ohio.

George Leone, a Carrier employe with a seniority date of May 2, 1950, held a third shift Car Inspector's position on the extra list. On the September 5, 1960 holiday, the Claimant was cut off while Leone was permitted to work.

The Carrier asserts that the Claimant's seniority date did not entitle him to work the holiday, because of the two regularly assigned Car Inspectors' positions scheduled to work that day—Claimant's position was junior to Car Inspector Jack Lloyd's position.

The record indicates that Mr. Lloyd did not work his regular assignment on the holiday because he had been working the position of a vacationing Car Inspector for several weeks. The Carrier contends that Lloyd's regular assignment was being held down by Leone and, therefore, Leone was permitted to work on the holiday because he (Leone) had taken over the duties, responsibilities, rest days and pay of that position. The Carrier also asserts that its action was in accordance with the practice in effect and in keeping with the provision of Rule 3(h).

The Organization contends there is no rule in the controlling Agreement that grants to a junior employe, temporarily filling the assignment of a senior employe, the seniority rights of the senior employe. Furthermore, the Organization claims that Rules 3(h) and (i) make specific provisions for the distribution of overtime.

The record does not support the Carrier's naked and unproven assertion that past practice permitted its action. Nor did the Carrier prove that Leone was cloaked with Lloyd's seniority when he (Leone) temporarily filled Lloyd's assignment. Furthermore, there is no rule in the controlling Agreement that supports the Carrier's position.

Consequently, it is the determination of this Board that the Carrier violated the Claimant's seniority rights—when it permitted Leone to work Lloyd's assignment on September 5, 1960—as is evidenced by both the practice and interpretation placed upon Rule 3(i) of the controlling Agreement.

However, inasmuch as it was Lloyd's and not the Claimant's position that worked on September 5, 1960, the compensation awarded is for eight hours' pay at the pro-rata rate.

AWARD

Claim sustained in keeping with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.