

Award No. 4227
Docket No. 3939
2-CCC&StL-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 54, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY

DISPUTE: CLAIM OF EMPLOYEES:

That within the seniority district of Freight Car Shop, Beech Grove, Indiana, the Carrier deprived certain employes of the Carmen's Craft of their service rights in the amounts varying from the minimum of three and one-quarter (3¼) hours to the maximum of twenty (20) hours on one or all dates of January 14th and 27th, February 4th, 5th, 8th and 9th, 1960, in violation of Rule No. 45 of the current agreement.

That, accordingly, the employes be compensated for all time lost as set forth in Exhibit (A)-(B)-(C)-(D)-(E) and (F) attached.

EMPLOYEES' STATEMENT OF FACTS: Each of the employes shown on Exhibit (A)-(B)-(C)-(D)-(E) and (F) turned their time cards in to his respective Foreman for the full eight hour period in each case. These time cards were, and are being held in the general foreman's office and each employe involved, together with the shop committee, were advised that they should go to the general foreman's office and correct the time cards.

The employes did not respond and a duplicate time card was made out and forwarded to the auditor's office for payment of hours of work actually performed, in order that the employes would not be short on their payroll checks for the entire day in which the discrepancies occurred.

The agreement effective October 1, 1923, as subsequently amended is controlling.

POSITION OF EMPLOYEES: That, claimants are entitled to be compensated for all time lost as shown in Exhibits (A)-(B)-(C)-(D)-(E) and (F)

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.

Because of rain the claimants refuse to work on their regular assignment of stripping hopper cars outside of the shop building during certain hours on six different days in January and February, 1960, and were not paid for those hours. On February 5th the time not worked was 6½ hours for each of seven of the claimants. On the other five days it varied from 45 minutes to 3 hours for 6 to 28 of the claimants, averaging approximately 2 hours per man per day involved.

Rule 45 of the agreement originated as Rule 52 of the National Agreement effective October 20, 1919, and after federal control became Rule 45 of the Agreement pursuant to Addendum 6, Decision 222, United States Railroad Labor Board, effective December 1, 1921. An interpretation by the Assistant Director, United States Railroad Administration was as follows:

“If the provisions of Rule 52 are complied with, and the employes refuse to work, they will not be paid.”

The carrier states without dispute except as hereinafter noted, that it transferred as many men as possible to work under cover during this period, and required as few as possible to work outside.

The exception is the Organization's contention that shop room was available on the five tracks in the shop, “only one track being used in production at this time, the other tracks were stored with cars shopped for repairs”.

The carrier contends that the tracks were not available as working room on these days; that prior to August 28, 1959, the shop force was 553 men and production quota was 22 box cars per day; that due to economic conditions that program was abandoned and a 98% force reduction was made, which therefore left a force of only about eleven men; that there were approximately 70 cars on inside shop tracks in various stages of repair, making their movement impossible; that 200 men were recalled to work in January, 1960; that meantime the main type of freight car needed had changed, and the repair program was changed accordingly; that the new program necessitated the repair of one or two defect cars and five hopper cars per day; that it therefore took many months to repair and move from the shop the 70 box cars remaining from the abandoned program; that the great majority of men were used in inside work, but that it was necessary to strip enough hopper cars each day to prepare them for repairs inside the shop; that this was outside work and constituted the claimants' regular assignment; that as many as possible were diverted to inside work, but that on the days in question it had been necessary to keep the claimants on their own outside assignments, to prepare hopper cars for repairs.

These statements of shop and work conditions are in the main undisputed and this Board cannot conclude from the record that shop room was available for claimants' work on the six days named, or that Rule 45 was violated by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.