

Award No. 4300
Docket No. 4150
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: The week of December 12, 1960, extra car inspector Papinchak worked six (6) days. This is a violation of the agreement as extra employees cannot work more than five (5) days per week. Since the agreement was violated the organization requests that car inspector Zaglauer be compensated for this day. He was the employee who was entitled to work this day.

EMPLOYEES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa.

That car inspector Papinchak was only an extra car inspector even if he took a hold down job, and this is borne out by the stand that the carrier took in a previous case, Case G-12, Docket No. 2462, Award No. 2612.

That as an extra car inspector Mr. Papinchak, according to the agreement, Rule 48, paragraph (b) should have only worked five days and not six.

That car inspector Zaglauer was the employee who was entitled to work the sixth day that had been worked by extra car inspector Papinchak.

That this violation occurred prior to the signing of the present holiday agreement referred to by the Master Mechanic-Car.

That 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: That the carrier violated Rule 48, paragraph (b) when the carrier allowed extra car inspector Papinchak to work

extra employe at the straight time rate and, if no junior extra or furloughed employe is available, it may be worked as rest day work at the rest day rate of pay.

"We think the reasoning contained in Awards 6970 and 6971 when considered in connection with what we have herein said, correctly interprets the rules applicable to extra employes called to protect regularly assigned positions."

Rule 25 (h) referred to in the above award is practically identical with Rule 1 (j) of the Agreement involved in the instant dispute.

Carrier's position is further supported by decision No. 31 of the Forty (40) Hour Week Committee in which said committee recommended the adoption of a rule conforming to the following:

"An extra employe cannot claim extra work in excess of 40 hours in his work week if another extra employe who has had less than 40 hours in his work week is available, except that if filling the assignment of a regular employe he may continue thereon, subject to any limitation in the individual agreement with respect to retentions of assignments by extra employes. When an extra employe takes the assignment of a regular employe, he assumes the conditions of such assignment, including the work week and rest days thereof."

CONCLUSION: Carrier has conclusively shown that the parties involved in this dispute, through the schedule agreement now in effect, have expressly provided that an extra employe when taking the assignment of a regularly assigned employe on a temporary basis, assumes all of the conditions of that assignment including the work week, rest days, etc., and that an extra employe, under certain conditions, may work more than five (5) days or forty (40) hours in a calendar week; also that in the instant case car inspector Papinchak, after working one (1) day from the extra list, secured a hold down on a regular assignment and the work week of that assignment had not ended when he completed forty (40) hours of work on Friday, December 16, and he therefore was entitled to complete the work week of said assignment by working Saturday, December 17.

Carrier has also shown that interpretation of Rule 1(j) which is involved in this dispute is the interpretation which had been agreed to between the carrier and organization through exchanged correspondence included in this submission.

Carrier respectfully submits therefore that the claim in behalf of car inspector Zaglauer is not supported by the agreement, is entirely devoid of merit and earnestly requests that same be denied.

Carrier's position is supported by decisions of the National Railroad Adjustment Board and the Forty Hour Week Committee.

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.

On Monday, December 12, 1960, Extra Car Inspector J. Papinchak, who was assigned to Car Inspectors' Extra List at McKees Rock, Pennsylvania, worked a second trick Car Inspector's assignment at Ivanhoe. On December 13, 1960, Papinchak was awarded a hold-down Car Inspector's assignment which he had requested in keeping with the provisions of Rule 34 of the controlling Agreement.

As the hold-down assignment had a work week of Tuesday through Saturday, Extra Car Inspector Papinchak worked six days during the week of December 12, 1960.

The Organization contends that the Carrier violated Rule 48(b) which reads as follows:

"Extra men not to work more than forty (40) hours in any work week, except when no regular men are available."

Accordingly, the Organization maintains that Car Inspector Zaglauer, the Claimant, should be compensated for December 17th as he was the employee entitled to work that day.

The Carrier, on the other hand, contends that it did not violate the Agreement and that its actions were strictly in accord with Rule 1(j) which reads as follows:

"Rest Days of Extra or Furloughed Employees.

"To the extent extra or furloughed men may be utilized under this agreement or practices, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment."

The basic disagreement in this case involves the pertinency of the two rules of the controlling Agreement as cited above.

Rule 48(b) limits extra men to a 40 hour work week. Rule 1(j) pertains to the utilization of extra or furloughed men and the governing conditions when extra men take the assignments of regular employees.

Obviously, the latter rule is controlling in the instant case, since Mr. Papinchak—after working December 12th as an extra Car Inspector—was properly assigned to a hold-down assignment in which position he undertook all the conditions of that assignment.

Precedent has been established for an extra man working a regular hold-down assignment "to take all conditions of the regular assignment, including the rest days", as evidenced by Organization's Exhibit Number 4.

This exhibit, comprised of a letter from the Carrier's Personnel Director to the Organization's International Representative, sets forth in part an interchange of correspondence between the parties regarding the interpretation and application of Rule 1 (j).

In this quoted correspondence, the following statement—dated April 30, 1959—from the Organization's International Representative occurs:

"The Organization would like to have Rule 1(j) apply as intended and to do this in all future cases."

This statement taken out of context might be considered ambiguous. However, when considered as a reply to the excerpt set forth below from former Director of Personnel Black's letter of March 24, 1959, it has a significant meaning in this case.

"We have no objections to properly applying the rule in accordance with the literal intent and meaning of same by requiring employes, either extra or regular working vacancies on regular assignments on a hold-down basis, to take all conditions of the regular assignment including the rest days provided our decision in the instant case fully settles same and you so advise us in writing along with advice as to the future application of the rule as outlined above."

This correspondence not only establishes a precedent but also sets forth guide lines to be followed in the disposition of this case. The record indicates that an extra employe, working a hold-down assignment, takes on all the conditions of the assignment.

Although additional evidence is not needed it could be gleaned from the record wherein the Organization's vacillating and contradictory positions are set forth in three previous labor disputes identified as Cases N-16, N-19 and G-31.

Accordingly, the Board must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September, 1963.