

Award No. 4578
Docket No. 4342
2-NYNH&H-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly paid Car Inspector Paul Kelly for services rendered on February 23, March 24, March 26 and March 27, 1961.

2. That accordingly the Carrier be ordered to pay Car Inspector Paul Kelly in the following manner and amounts:

Thursday, Feb. 23rd — 8 hrs. str. time @ \$2.594 per hr.	\$ 20.75
Thursday, Feb. 23rd — 7.8 hrs. 1½ time @ \$3.891 per hr.	30.47
A total of \$51.21 less what he had been paid.	
Friday, Mar. 24th — 8 hrs. str. time @ \$2.594 per hr.	20.75
Friday, Mar. 24th — 8¼ hrs. 1½ time @ \$3.891 per hr.	32.10
A total of \$52.85 less what he had been paid.	
Sunday, Mar. 26th — 8 hrs. str. time @ \$2.549 per hr.	20.75
to	
Monday, Mar. 27th — 28.75 hrs. 1½ time @ \$3.891 per hr.	112.86
A total of \$133.61 less what he had been paid.	

EMPLOYEES' STATEMENT OF FACTS: Paul Kelly, hereinafter referred to as the claimant, is employed by the New York, New Haven & Hartford R.R. Co., hereinafter referred to as the carrier, as a car inspector at South Station Terminal, Boston, Mass., on a regular assignment working Wednesday to Sunday, 7:00 A. M. to 3:00 P. M., Monday and Tuesday as rest days.

On February 22, 1961, the claimant was instructed by the carrier, to make himself ready to appear in court, in New York City, a distance of 229.5 miles from his home terminal, as a witness for the carrier on the following day.

The claimant departed South Station, Boston, Mass., @ 8:00 A. M. February 23rd, arrived in New York at 12:20, appeared before the court during

ther, that the sole payment to one held off his assignment on a work day is the earnings of his assignment.

The claim presented by the employes goes beyond these provisions of Rule 22 and into an area not the subject of agreement between the parties.

In a similar question of jurisdiction the Third Division, National Railroad Adjustment Board (Referee McMahon), said in Award No. 8838:

"The work here involved is not exclusively that of the Clerks. Such can only be acquired by negotiation between the parties. This Board has no authority to make any change, by adding to or detracting from the provisions of the rules as agreed to between the parties. The claims are without merit as applied to the provisions of the Agreement and shall be denied."

Similarly in Award 3086 your Board said:

"Our only function is to determine if the agreement has been violated.

"If this practice of requiring physical examinations is unfair or inequitable it should be corrected by negotiation."

We respectfully submit that the subject of this dispute is a negotiable matter not within the jurisdiction of this Board to grant.

In summary, it is the position of the carrier that:

1. The sole payment to which Mr. Paul Kelly is entitled for being held off his regular assignment on February 23, March 24, and March 26 is one day's pay at straight time.

2. The sole payment to which Mr. Paul Kelly is entitled for being held at court from 9:00 A.M. to 5:00 P.M. on March 27, an assigned rest day, is eight hours at penalty time.

3. The employes concede there is no provision under the rule for the payment of travel or waiting time.

4. The employes by their failure to except to the standing interpretation over a period of seventeen years have, in effect, assented to the carrier's interpretation.

5. That the instant claim finds no support either in rule or practice and should for all the reasons set forth here 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 employees 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 waived right of appearance at hearing thereon.

In the instant dispute, Claimant Kelly is in almost the identical situation as Claimant Dunford in Award No. 4577, except that only one rest day of Claimant Kelly is involved.

That which we said in Awards 4576 and 4577 regarding the interpretation of Rule 22 of the controlling agreement, is equally applicable here and dispositive of this dispute.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.