Award No. 5013
Docket No. 4967
2-SLSF-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling Agreement, carman committeeman P. W. Pape was unjustly denied pay while attending an investigation during regular working hours on February 27, 1964.

2. That, accordingly, carrier be ordered to compensate Committeeman, P. W. Pape, for 2.8 hours pay at his pro rata rate.

EMPLOYES' STATEMENT OF FACTS: On February 21, 1964, Mr. P. W. Pape, the duly authorized local chairman was notified, by letter, of the investigation to be held February 27, 1964 and that he might appear as the representative of Mr. F. E. Tatum and he did attend the investigation of carman F. E. Tatum at Memphis, Tennessee. This investigation began at 8 A.M. on the above date and was concluded at 9:47 A.M. which was during the regular working hours of local chairman, P. W. Pape. Mr. Pape by attending this investigation hearing lost pay in the amount of 2.8 hours, which was deducted from that day's pay by the carrier.

The carrier has declined to adjust this dispute on any basis and the agreement effective January 1, 1945, amended January 1, 1952 is controlling.

POSITION OF EMPLOYES: On January 1, 1945, the St. Louis-San Francisco Railway Co., the St. Louis-San Francisco and Texas Railway Co., hereinafter referred to as the carrier, and System Federation No. 22 entered into an agreement, which was subsequently amended, covering the six mechanical crafts and Rule 34 reads as follows:

"(a) Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case, subject to approval of Local Committee, shall be taken to the foreman by the duly authorized Local

requested to observe that a vast majority of such statements were secured after conference handling had been concluded. Appropriate objection was registered by the carrier in its letter September 7, 1965.

The carrier specifically denies that it has ever, by past practice or otherwise, acquiesced in an interpretation of old Rule 34 (c) or current Rule 34 (h) that would annul the contract right, and the organization has not and cannot show where a claim, such as here presented, has been allowed on appeal to the highest officer of the carrier designated to handle such matters. Moreover, carrier clearly establishes that the carrier has not acquiesced in a practice contrary to the rule.

The carrier has taken and maintained the position that the Agreement rule is free and clear of any ambiguity. The organization has never contended otherwise and, therefore, it is unnecessary to look to past practice to determine its true intent and meaning.

It was said by the Second Division in Award 3111 (Carey) that—

> "Prior awards of this Board too numerous to mention recognize the principle that past practice of the parties may not be utilized to impair the plain language of an agreement."

In Third Division Award 6840, it was held that past practices under a rule on a specific subject that is clear and unambiguous does not change the rule itself and either carrier can enforce or employes can require carrier to enforce it according to its terms.

Summarizing what has heretofore been said, the organization is relitigating a dispute which has been previously considered and decided by this division; the rule is free and clear of any ambiguity; past practice may not be utilized to impair the plain language of the rule; and lastly, the carrier is applying and enforcing the rule according to its terms.

This division is respectfully requested to reaffirm in this dispute its Award 4363.

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 waived right of appearance at hearing thereon.

The issue in the instant dispute arises between the same parties and concerns a state of facts essentially the same as those dealt with in Second Division Award 4363. The controlling Agreement is that effective January 1, 1945, amended June 1, 1952 and as further amended. Here, as under the facts of Award 4363, investigation was under Rule 35, entitled "**Discipline**" and was not under Rule 34 which is entitled "**Time Claim and Grievances.**"

Where a dispute between the same parties, under similar facts and the same governing rules, has been considered previously and ruled upon, the prior decision should control. See Third Division Award 10913. And as was held in Award 4363, we are of the opinion that instances claimed of past practice to the contrary do not estop Carrier from the interpretation here applied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December, 1966.

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