

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (Sytem Federation No. 16, Railway Employees'
(Department, A.F. of L. - C.I.O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

- "1. That the Norfolk and Western Railway Company's refusal to consistently allow Carmen and Helpers assigned to and working in the train yards at its Elmore Shops, and at Oceana, West Virginia, checking in and out pay of one (1) minute for each hour actually worked, in accordance with Rule No. 47 of the Current Agreement (VGN), and the inconsistent manner in which such pay is allowed to some employees while denied to others violates said Rule 47 of the Current Agreement and is both discriminating and damaging to the employees.
- "2. That accordingly the Norfolk and Western Railway Company be ordered to comply with the agreement, and allow such checking in and out pay of one (1) minute for each hour actually worked, of which they have been, and are being deprived because of such violation, and each subsequent violation thereafter, until this claim is satisfactorily settled, to all Carmen and Helpers at Elmore Shops and at Oceana, West Virginia, who have been and are being deprived of such pay because of such continuing violation, including those employees named hereinbelow, with such pay to be retroactive for a period of sixty (60) days prior to February 18, 1971, and to include interest of 6% per annum to be compounded annually on the anniversary date of claim until paid.

"Carmen:

Upgraded Helper Carmen:

Helper Carmen:

A. G. Hoge, Sr.	S. E. Thompson	J. J. Clark
J. E. Porterfield	P. C. Hubbard	Z. W. Lawrence
R. M. Lawrence, Sr.	C. J. Pettrey	L. L. Mills
M. G. Harvey	C. J. Brickford	W. W. Bridges
H. D. Aliff	A. F. Taylor	F. A. Masters
J. O. Johnson	W. B. Clemson	S. Santon
A. C. Lilly	K. W. Pennington	W. R. Cooper
W. C. Underwood	W. L. Mathena	C. A. Canada
J. C. Farmer		W. Green

"Carmen:

H. O. Clemson
B. E. Shorter
R. G. Hall
J. L. Morris, Jr.
R. R. Hebb
J. B. Hamlin
C. W. McKinney
O. K. Yopp
W. E. Ford
E. L. Sowers, III
R. F. Agee
E. W. Dehart"

Helper Carmen:

E. W. Yopp
B. J. Higginbotham
B. T. Hall
Drexel Duncan
J. E. Shorter
J. O. Pettrey
R. E. Ferguson
E. R. Davis
I. L. Reynolds

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.

Claim was filed on behalf of carmen working in Carrier's train yards at Elmore Shops, Elmore, West Virginia. It is Petitioner's contention that those carmen and helpers working on the Shop Track at Elmore are allowed one minute for each hour worked for checking in and out, per application of Rule 47, while those carmen and helpers working in the train yards are denied this arbitrary although all Carmen check in and out in the same manner. They contend that Rule 47 is clear and unambiguous, applying to all carmen and the allowance provided in Rule 47 should not be restricted to those carmen working in the Shop Track. And since the Rule is clear no past practice to the contrary can change its meaning.

Carrier, however, maintains that when they merged with the former Virginian Railway Company, an agreement was consummated whereby former Virginian employees continued to work under the provisions of their agreements with the former Virginian Railway Company. And under Rule 47, as applied on the Virginian Railway Company, employees assigned

to the transportation yards had not been receiving the arbitrary for checking in and out prior to the merger. Since Rule 47 has been applied in this manner for 28 years, Carrier insists Petitioner cannot now challenge such application.

In their submissions to the Board, both Petitioner and Carrier have set forth principles which they feel are dispositive of the issue at hand. Petitioner argues that Rule 47 is clear and unambiguous and cannot be altered by any past practice to the contrary. And for their part, Carrier maintains that a practice of long standing well known and acquiesced in by the parties should be controlling and should not now be challenged by the Petitioner. Both these principles have been well established by this and other Divisions of the National Railroad Adjustment Board.

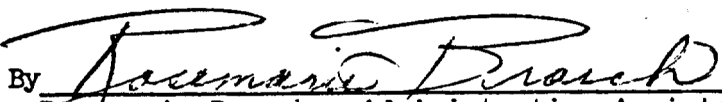
It is apparent that uncertainty has arisen relative to the purpose and intent of Rule 47. This Board feels that in trying to ascertain what the parties intended when they negotiated Rule 47 a uniform past practice of 28 years must be given weight. With the exception of a period of 2 months which Carrier claims was an error, the payment of one minute for each hour worked account checking in and out has never been allowed to those carmen in the train yards at Elmore Shops. Such an accepted practice of long standing must be held, in the instant case at least, to be conclusive on the intent of Rule 47. Forebearance on Petitioner's part for such length of time must be considered acquiescence in the application of Rule 47. We, thus, are constrained to conclude that the claimants herein are not entitled to the one minute per hour for checking in and out.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of May, 1974.