Award No. 24
Docket No. 14
2-NYC-CM-'36

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee John P. Devaney when Award was rendered

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES.—That six car inspectors at Harmon Platform who were required to work on their day off when their regular relief man was also working, should be paid time and one-half in accordance with the six-day per week memorandum of agreement entered into between the New York Central Railroad Company and System Federation No. 103, dated July 10, 1930.

FACTS.—Six car inspectors at Harmon Platform, on the line of the carrier, who were required to work on their day off when their regular relief man was also working, make demand for pay at the rate of time and one-half and base their claim on the six-day-week memorandum of agreement entered into between the carrier and System Federation #103, dated July 10, 1930.

The car inspectors involved and who were required to work on their day off when their regular relief man was also working, and who were paid the straight pro rata time, are as follows:

A. Ruskopski.
W. Taylor.
J. Grundler.
J. J. Tropey.
G. Bottas.
A. Matyi.

POSITION OF EMPLOYES.—That the above mentioned car inspectors were required to work on their day off when their regular relief man was also working, and are therefore entitled to be paid at the rate of time and one-half.

That the regular man, under the agreement dated July 10, 1930, was not obliged to work for straight time when his relief man was also working. That if the regular man was compensated on the straight time basis, the company would be gaining under the said six-day agreement, when it was intended only to save the company from increasing its expenses and not to permit the company to make a saving.

POSITION OF CARRIER.—That Rule 6 on which the employes base their claim for time and one-half was not violated.

That the hours of work of the regular force at Harmon Platform were changed from a seven- to a six-day assignment by agreement between the parties heretofore referred to, and that this agreement has not been violated by calling the regular men back to work on the seventh day.

None of the men making claim worked more than 8 hours in a 24-hour period, and worked only the same number of hours they would have worked on their regular assignments. No bona fide overtime was worked.

That the claim is without foundation; is contrary to the plain intent of the understanding and agreement.

That the expense of the railroad company would be increased by requiring it to pay a penalty overtime.

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.

The parties to said dispute were given due notice of hearing thereon.

FURTHER FINDINGS.—The agreement between the carrier and System Federation #103, dated July 10, 1930, was for the purpose of providing employment for furloughed men without increasing the expense of the railroad company.

The action of the carrier and System Federation #103 in thus agreeing on a modification of the rule was proper.

The agreement was in writing, and we quote from it only so far as is necessary to give proper understanding of the decision.

Paragraph 2 of the agreement provides:

> "Due to the large number of furloughed men at practically all large points, New York Central System Federation No. 103 has requested that the six-day per week principle be applied to car terminals which are now working on a seven-day per week basis and that relief men be provided from the furloughed list at the respective points to permit the regular men one day's rest in seven, thus providing employment for the furloughed men without increasing the expense to the railroad company."

Thereafter follow six detailed statements indicating in what manner the agreement would affect both regular and relief men.

Section (a) says:

> "The six-day per week principle is to apply to all points where it can be practically applied, with the understanding that if there are no furloughed men at that particular point, furloughed men at other points will be given the opportunity to take relief jobs."

Section (d) provides as follows:

> "In cases where the relief man is detained from working, it is understood that if necessary, the regular man will work on this regular day off and be compensated for such service at the straight time, with the understanding that if—after his regular day off, he can be spared, he will be permitted to have the time off."

In this case there are not sufficient men available to permit the calling of furloughed men to protect the service on the basis in question. Programmed relief men were at work and regular men who were programmed to be off had to be used because the car inspectors who were programmed to work reported sick.

We have but to apply the provisions of Section (d) of the agreement of July 10, 1930, to the facts as herein stated to dispose of the issue in this case. We find that in this case the relief men were "detained from working" and that, therefore, the regular men were obliged to work on their regular day off, for which service they must be compensated at the straight time rate.

AWARD

Claim for overtime denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1936.