

Award No. 266

Docket No. 272

2-FEC-CM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

FLORIDA EAST COAST RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: Claim for pay for all carmen, helpers and carmen apprentices for all time lost between April 19, 1937, to November 6, 1937, account Buena Vista car department being worked in violation of Rules 6 and 16 of the agreement.

EMPLOYEES' STATEMENT OF FACTS: The car department forces at Buena Vista were worked five days per week over a spread of seven days per week between April 19, 1937, and November 6, 1937, by means of staggering, and, in some instances, the men were given from six to eight days off in succession, which made it impossible to get in forty hours' time in the given week. The working schedule was arranged so that all employes who were required to work on overtime days (Sundays and holidays) were laid off during the regular week days to make up the time. Neither the representatives nor the men were given any voice over which days they would work or be off, but instead the schedule was arbitrarily imposed by the management.

POSITION OF EMPLOYEES: It is the contention of the employes that it is not permissible under the provisions of Rule 16 of the agreement to work employes forty hours per week over a spread of fifty-six hours, or seven days per week and that bulletin No. 24, posted over the signature of W. D. Flood, car foreman, on April 13, 1937, is contrary to the rule. Rule 16 of the agreement reads in part as follows:

"When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week, before reducing the force; or, when mutually agreed between the General Committee and the Management, the hours may be reduced to thirty-two (32) hours per week, for a specified time. Any emergency work done in the shops on days when the shops are closed because of the application of this rule, will be divided between all the employes in their respective departments, as nearly equally as possible."

Rule 6 reads as follows:

"When it becomes necessary for employes to work overtime, they shall not be laid off during regular working hours to equalize the time. At points where a sufficient number of employes are worked, men will not work two (2) consecutive Sundays; Holidays to be considered as Sundays. Records shall be kept of overtime worked, and men called with the purpose in view of distributing overtime as nearly equally as possible."

This rule does not provide how this forty hours shall be made, and in order to carry on the work without detriment to the service, it was necessary to work out a schedule that did not allow this time to be made in five consecutive days in all instances in each week. The older men on the seniority roster had five days in consecutive order and relief men were staggered as is shown in Exhibit 7. This was necessary in order to establish a schedule that was workable and which gave each man five days in each week.

The local committee at Buena Vista made a schedule based on each man taking twenty-two (22) days' vacation and the remaining men to work full time. The schedule did not specify what should be called full time. The inspection jobs must be protected seven days per week, and repair track jobs six days per week. The schedule submitted by the local committee was not workable for the following reasons: The reduction in expenses by giving each man twenty-two (22) days' vacation was not sufficient to meet the amount of money appropriated for the work.

The schedule did not cover all jobs necessary to be protected.

No consideration is given the requirements of the service or the number of jobs required on shop track as the schedule states: "All relief men not relieving regular men to work on shop track." This would result in an insufficient number of men on repair track on some days and on others there would be more men than could be used.

No consideration is given the first paragraph of Rule 8 of the agreement, which reads:

"Employes changed from one shift to another will be paid overtime rates for the first shift of each change."

Rule 6. Distribution of Overtime

"When it becomes necessary for employes to work overtime, they shall not be laid off during regular working hours to equalize the time.***"

Rule 6 was not violated. If in the schedule of five days per week a man worked more than eight hours per day, he was paid at overtime rates for time in excess of eight hours and he was not laid off to bring his total time down to forty (40) hours per week. In working forty (40) hours per week, if a man worked on Sunday, he was paid straight time for thirty-two (32) hours and overtime for eight (8) hours on Sunday, and was not required to lay off to bring his total earnings for the week down to what he would have made by working forty (40) hours at straight time.

The railway company had nothing to gain by working the men forty (40) hours per week. It was done in the interest of the employes as a whole, to spread the work so that all might share in it.

This practice of working forty (40) hours per week was in effect at Bowden, Florida, (Northern Freight Terminal of the Florida East Coast Railway) and at New Smyrna Beach, Florida, (junction of the Okeechobee Branch and main line), during the summer of 1937, and is in effect at the Bowden, Florida, shops this summer of 1938, and this schedule has been agreed to by the carmen at these points and no objection has been raised by the local committees at those points.

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.

Rule 16 was not properly applied, and the facts of record show that Rule 6 was violated, but to what extent there was monetary loss due to the violation of either rule, this Division is unable to say, and this remain, therefore, a matter of determination between the parties to the dispute, so that necessary wage adjustment may be made.

AWARD

Claim of employes is sustained.

The question of monetary loss, if any, shall be a subject of negotiation between the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1938.