

Award No. 917

Docket No. 856

2-IC-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That at East St. Louis, Illinois, on December 2, 1940, the carrier arbitrarily changed the working hours of a group of first shift carmen and helpers, from 7:00 A. M. to 3:00 P. M., eight consecutive hours, to the hours of 7:00 A. M. to 3:30 P. M., eight hours and thirty minutes, without pay for the extra thirty minutes held on the job.

2. That in consideration of this arbitrary action, these carmen helpers shall be—

- (a) Restored to their former working hours, 7:00 A. M. to 3:00 P. M.
- (b) Additionally compensated daily in the amount of one hour from 3:00 P. M. to 3:30 P. M., retroactive to December 2, 1940.

EMPLOYEES' STATEMENT OF FACTS: At East St. Louis, Illinois, the carrier maintains a force of carmen in the train yard, identified as A, B, C and E, on a three shift basis, and all carmen are carried on the same seniority roster.

This force of carmen and helpers are assigned to perform the usual train yard inspection and running repairs.

Some of these carmen and helpers on the 7 A. M. shift are assigned to service automobile cars equipped with automobile loaders.

Prior to December 2, 1940, all of this force of carmen and helpers worked eight consecutive hours, 7 A. M. to 3 P. M., 3 P. M. to 11 P. M. and 11 P. M. to 7 A. M.

On December 2, 1940, the hours of carmen and helpers assigned to servicing automobile cars equipped with automobile loaders were arbitrarily assigned to work from 7 A. M. to 11 A. M. and from 11:30 A. M. to 3:30 P. M. They are required to take a lunch period of thirty minutes after the close of the regular established train yard shift, for which eight hours and thirty minutes held on the job, they are only paid eight hours at straight time.

Thirty minutes additional time at the rate of time and one-half has been claimed, and payment of which has been declined.

In reality, the action therein was merely a *modus vivendi* with one craft about the application of a general rule relating to the six federated crafts. In support thereof, there is cited the agreement made by representatives of this carrier with the general chairman of the International Association of Machinists regarding seniority which this Board held invalid because one general chairman could not change the general rules laid down for all of the crafts (Second Division Award 307). By the same token, the general chairman of the Brotherhood Railway Carmen of America could not change the application of a general rule for all the crafts and a side understanding could obtain only so long as it was mutually agreeable to the disputants.

The situation here is analogous to case covered by Third Division Award 272 where a letter agreement was entered into and it was held that the arrangement was not an agreement in the sense contemplated by Section 6 of the Railway Labor Act and could be terminated upon notice. (See also Third Division Awards 449, 453 and 662.)

The circumstances in this case are likewise analogous with those covered by Second Division Award 876. Only one shift is worked on the repair track in C yard, with hours from 7:00 A. M. to 11:00 A. M. and 11:30 A. M. to 3:30 P. M., with lunch from 11:00 to 11:30 A. M. The employes are so assigned as verified by carrier's Exhibit D, which is copy of bulletin showing how these positions are assigned. The inspectors in the train yard work three consecutive shifts of eight hours each, or from 7-3, 3-11, and 11-7, all being allowed twenty minutes for lunch without loss of time.

The carrier respectfully requests that this claim 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 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.

The record fails to establish that the men working on the Evans auto gang on certain tracks set apart in C yard repairing cars equipped with Evans auto loading device, are a part of the three shift running repair and inspection forces employed at East St. Louis. It appears from the record that on occasions and in emergency, men are sent from these repair tracks in C yard to the regular running repair and inspection forces; when this is done such men should be allowed the twenty minute lunch period.

AWARD

Claim 1, denied.

Claim 2 (a), denied; (b) Sustained to the extent that men from Evans auto loader tracks have not been allowed the twenty minute lunch period when used in other yards as a part of the regular running repair and inspection forces.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.