

Award No. 1270

Docket No. 1191

2-LV-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That effective June 11, 1945, the regularly assigned hours of employees of the Carmen's Craft were changed in violation of the current agreement from ending at 3:00 P. M., with an allowance of 20 minutes for lunch with pay, to ending at 3:30 P. M., with 30 minutes for lunch without pay.

2. That accordingly the carrier be ordered to—

- (a) Reestablish the assignment of hours from 7 A. M. to 3 P. M.
- (b) Additionally compensate each of the aforesaid employees in the amount of a minimum of one hour for the services they have rendered each day from 3:00 P. M. to 3:30 P. M., retroactive to June 11, 1945.

EMPLOYES' STATEMENT OF FACTS: The carrier employed a force of about 45 carmen, 12 carmen helpers and 5 coach cleaners at Coxton, Pennsylvania, car shops, and for many years prior to June 11, 1945, the regularly assigned hours of said employees were from 7 A. M. to 3 P. M., eight consecutive hours, with an allowance of 20 minutes for lunch without deduction in pay.

On Sunday, June 10, 1945, the carrier posted a pencil notice on the bulletin board reading as follows:

"Starting June 11, 1945, all employees at the Car Shop will take 30 minutes out for lunch period.

The starting time will be 7 A. M. to 11:30 A. M. with 30 minutes for lunch, resuming work at 12 noon, until 3:30 P. M., which will be quitting time. Be governed accordingly.

A. J. Dubetsky."

This change in the time and length of the lunch period was effected by the carrier, without mutual agreement, or without consulting the duly authorized local committee or their representative for their concurrence in such change. This is substantiated by—

There is no difference between the case at South Easton and the case at Coxton with respect to the manner in which conference was held before assignment of lunch period to one-shift forces.

Under the circumstances herein set forth, the carrier maintains there has been no violation of any rule of the carmen's agreement and, for this reason, the claim in this case should 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.

Rule 2 of the parties' current agreement undoubtedly gives carrier authority to fix a lunch period without pay but provides, as a condition precedent to the right to exercise that authority, that the System Federation, through its proper representatives, be given a reasonable opportunity to mutually agree with the carrier as to the time when it should be taken and the length thereof. Of course, if no mutual agreement can be reached within a reasonable time after the opportunity therefor is given or if the representatives of the organization refuse to act, then a different situation arises but one with which we are not here concerned. However, for the carrier to proceed to exercise such authority without having given the proper representatives of the organization a reasonable opportunity to mutually agree with the carrier in regard to the time and length thereof, was in violation of the provisions of Rule 2.

Claim 1 should therefore be sustained. However, it appears that on June 6, 1947, the parties mutually agreed to a 30-minute lunch period and the time thereof, same to be effective as of June 7, 1947. Consequently, claim 2 (a) should be denied and 2 (b) limited accordingly.

AWARD

Claim 1 sustained; claim 2 (a) denied; and claim 2 (b) sustained for the period from June 11, 1945, to June 6, 1947, inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of July, 1948.