

Award No. 1272
Docket No. 1196
2-SP(Tex&La)-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. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement, Car Inspector J. M. Rollins is entitled to be additionally compensated from 7:00 A. M. to 3:00 P. M., eight hours at his regular rate, with time and one-half from 3:00 P. M. to 4:00 P. M. daily since April 15, 1947, and that accordingly the carrier be ordered to so compensate this employe, less the amount he has received subsequent to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: On January 31, 1947, bulletin No. 26 was posted for a position of one car inspector at Victoria, Texas, assignment from 7:00 A. M. to 3:00 P. M., daily except Sundays and legal holidays, account new assignment. On February 3, 1947, Car Inspector J. M. Rollins placed a written application to bulletin No. 26, and on February 5, 1947, Rollins received a letter from Car Foreman O. G. Ford informing him that he (Rollins) was the successful bidder to bulletin No. 26 as car inspector at Victoria, Texas, assigned hours from 7:00 A. M. to 3:00 P. M., daily except Sundays and legal holidays. Car Inspector Rollins worked this assignment until April 15, 1947, at which time Car Foreman O. G. Ford changed his working hours to 7:00 A. M. to 12 Noon, 1:00 P. M. to 4:00 P. M. In other words he was told that he would thereafter take a one hour lunch period, without pay, from 12 noon to 1:00 P. M. The requiring of Car Inspector Rollins to take the one hour lunch period without pay therefor was without a mutual agreement between the carmen's local committee and the carrier's local officers.

The controlling agreement is dated effective March 1, 1943.

POSITION OF EMPLOYEES: It is submitted that when the claimant was awarded the position of car inspector with assigned hours of 7:00 A. M. to 3:00 P. M. (Exhibit B-2) on February 5, 1947, with an allowance of 20 minutes for lunch without deduction therefor, he was entitled to such daily lunch period until such time as the provisions of Rule 2, reading in part,—

“The time and length of the lunch period shall be subject to mutual agreement”

were complied with.

properly determine its construction and intent. When that is done, it is abundantly clear that the agreement between the parties does not require the abolishing of a position and its rebulletining for a minor change in the assignment, and to rule otherwise would be the creation of a new rule, which is not a function of the National Railway Adjustment Board.

CONCLUSION:

There is no rule of the agreement that supports the claim made in this case. The carrier has proven that the System Federation has recognized, under the agreement, there is no requirement to abolish and rebulletin a position simply for a minor change in the working hours. The controlling agreement was negotiated by and between the parties. They understood what they had agreed to and how it was to be applied. The subsequent practices under the agreement clearly indicates the construction the parties to the agreement placed upon it. The claim presented in this case is wholly at variance with the previous construction of the agreement by the parties, and any sustaining award could not possibly be by interpretation and application of the agreement, but only the making of a new rule by the Board.

* * * * *

Wherefore, premises considered, the carrier respectfully requests that the claim made in this case be in all things 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.

Effective as of April 15, 1947, carrier, without consulting the organization through its proper representatives and seeking its mutual agreement thereto as provided by Rule 2 of the current agreement, changed claimant's lunch period from one of 20 minutes with pay to one of an hour without pay, thus extending his regular work assignment from 3 P. M. to 4 P. M.

Carrier has the right to fix a lunch period without pay but Rule 2, as a condition precedent to the right to exercise that authority, provides that the organization, through its proper representatives, be given a reasonable opportunity to mutually agree with the carrier as to the time when it shall be taken and the length thereof. For the carrier to proceed to exercise such authority without giving the proper representatives of the organization a reasonable opportunity to mutually agree with it in regard to the time when it is to be taken and the length thereof is in violation of that provision in Rule 2.

The record also shows that claimant no longer works this assignment, although the exact date of his change is not shown. It also discloses that at various times after April 15, 1947, he worked the one-hour lunch period, for which he was paid. Therefore, the claim should be allowed for the period of time he continued to work the assignment after his lunch period was changed on April 15, 1947. It should be allowed at one and one-half times his regular pay for all time that he worked during that period between the hours of 3 P. M. and 4 P. M., less, however, what he has been

paid for working during the improperly fixed lunch period from 12 Noon to 1 P. M., as that was part of his regular assignment.

AWARD

Claim sustained as in the findings set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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