

Award No. 1332

Docket No. 1242

2-AT&SF-FT-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Federated Trades)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)**

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement, Machinists A. A. Montoya and Tomas Sanchez; Machinist Helpers Frank Chavez and G. Romero, and Crane Operator Joe M. Montano, were improperly deprived of compensation during their regular work hours from 3:30 P. M. to 5:00 P. M. on March 4, 1948, while attending formal investigation as witnesses, and that accordingly the carrier be ordered to reimburse these employes for the aforesaid time lost on March 4, 1948.

EMPLOYES' STATEMENT OF FACTS: At Albuquerque, New Mexico, the carrier employed Alfonso Chavez in 1939, in the capacity of machinist helper, promoted him to a machinist differential helper, then as a Class B machinist, and on February 11, 1948, assigned him as an overhead crane operator during shop hours from 8:00 A. M. to 5:00 P. M.

The carrier preferred charges against Alfonso Chavez, crane operator, and summoned him to stand formal investigation beginning at 3:30 P. M. on March 4, 1948, and which ended at 5:10 P. M. that date. The carrier introduced at this investigation, in support of charges against this accused employe, written statements, one each from General Locomotive Foreman J. M. Bunten; Erecting Gang Foreman T. F. Gillespie; Stripping Gang Foreman L. Antoine; Boiler Foreman E. Keller, Erecting Gang Foreman E. I. Heckathorn, and in addition only one witness, namely: Carl Booth, crane inspector.

Mr. Chavez, the accused, from among those in a position to observe the accident, requested as his witnesses these employes, namely:

Joe M. Montano, crane operator
Tomas Sanchez, machinist
Frank Chavez, machinist helper
A. A. Montoya, machinist
George Romero, machinist helper

who are named in the above statement of dispute, and are hereinafter referred to as the claimants, with assigned shop hours from 8:00 A. M. to 5:00 P. M.

compensation while attending an investigation during their regular work hours on March 4, 1948. It further asserts that this claim is not supported by any rule of the current agreement nor by past practice and it is in effect simply a request for a new rule, and carrier respectfully requests that it be denied.

Carrier reserves the right to submit such additional facts and evidence as it may conclude are required in reply to the ex parte submission of the employees or any subsequent oral argument or briefs of the employees in this dispute.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Section 2—Fourth, of the Railway Labor Act is merely permissive and relates primarily to carriers. It seems clear that it was not intended to grant any substantive right to employees, particularly in respect to investigations and hearings as distinguished from conferences.

Rule 33(h) contained in the current agreement between the parties concerns only witnesses called by the company. The examination of claimants during the course of the hearing by carrier representatives does not make them carrier witnesses within the meaning of this sub-section. The sub-section, in fact does not come into play where, as here, the hearing was held during regular bulletined hours.

Rule 33(i) relates only to committeemen and inferentially precludes from its benevolence other unspecified classes of employees such as these claimants.

Evidence of past practices relied on here is weak and conflicting and is of slight value in the case at hand, particularly in the face of Rule 33(i).

We fail to find in this record evidence of such nature to merit comment on other provisions of the rules. Here the investigation was conducted at a reasonable hour, with dispatch and at a minimum inconvenience to all concerned, hence the question of fair trial is not involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of August, 1949.