Award No. 1403
Docket No. 1310
2-NYC-FO-'50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Firemen & Oilers)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the current agreement was violated when the carrier abolished the piece work basis of payment of flue cleaners and substituted therefor the established hourly rates, effective June 1, 1948.

2. That accordingly the carrier be ordered to additionally compensate each of these affected firemen and oiler employes assigned as flue cleaners the difference between what they each have been paid at the established hourly rates and the amount that each would have earned, on the piece work basis of payment, retroactive to the aforesaid date.

JOINT STATEMENT OF FACTS: Several years ago the carrier made the election at certain engine terminals on the New York Central Line East to compensate firemen and oiler employes assigned as flue cleaners on the piece work basis and which payment system was established in conformity with the rule of the agreement then in effect.

Effective June 1, 1948, the carrier abolished the piece work basis of payment applicable to the work of flue cleaning and in lieu thereof, paid for such work the established hourly rates at all involved engine terminals which is confirmed by the submitted copy of letter dated April 26, 1948, identified as Joint Exhibit No. 1.

This action was protested on May 14, 1948, and was subsequently handled with the result that the parties were unable to resolve the dispute on the property.

The agreement effective October 1, 1929, is controlling, Rule 19 of which reads as follows:

"Rule 19—Piece Work

P.W. 1(a) Piece work will not be applied to power houses, engine-room or boiler-room employes.

(b) Piece work may be adopted at any point where the volume of work and other relevant conditions make it practicable. Repre-

carrier progressively abolished piece work so far as shop craft employes were concerned at its car repair tracks all over the system, nor for that matter when piece work was abolished for shop craft employes at all car and locomotive back shops on the system effective June 1, 1949 in conformity with the notification contained in carrier's Exhibit C. In other words, these very same System Federation No. 103 representatives who are now presenting this case to the Board will readily and freely admit that the carrier is wholly free to exercise its option to discontinue piece work insofar as shop craft employes are concerned, but are here arguing that under identical rule provisions it cannot abolish such piece work for laborers unless and until they negotiate with System Federation No. 103 representatives. Applying this reasoning to the abolition of piece work at car and locomotive back shops effective June 1, 1949, as referred to in carrier's Exhibit C, these System Federation No. 103 representatives have condoned the carrier's action insofar as the several thousand shop craft employes are concerned, but would here force the carrier to restore piece work to the few laborers who were working piece work at the aforementioned shops. Such contentions are exceedingly inconsistent and certainly cannot be supported by any logical reasoning.

The carrier holds that Section PW-1(b) of Rule 19 in the circumstances under which it was negotiated clearly provided for not only the adoption of piece work, but also the abolition thereof, and consequently there was no necessity for negotiating any rule changes in accordance with the procedure outlined in Section 6 of the Railway Labor Act, as amended. To the contrary, it appears to the carrier that this is a case rather where the employes, if they desire a change in the rules, should serve notice on the carrier as provided for in the Act.

The contentions herein presented by the employes cannot be supported by any logical conclusions and the claim, therefore, should be denied in its entirety.

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 or 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.

Several years ago the carrier elected, at certain engine terminals, to compensate firemen and oilers assigned as flue cleaners on the piece work basis under a payment formula established in conformity with the agreement then in effect. Effective June 1, 1948, the carrier by letter dated April 26, 1948, abolished such piece work basis of payment and substituted established hourly rates for flue cleaners at all engine terminals involved.

The question presented is whether or not the agreement permitted such action. "Piece Work" Rule 19 and "Effective Date and Duration" Rule 20 are primarily involved and controlling. In that connection Rule 19 1(b) provided:

> "Piece work may be adopted at any point where the volume of work and other relevant conditions make it practicable. Representatives of the employes will be notified of the extension of piece work to other points."

Rule 19 2 (a) provided:

> "At points where piece work is being inaugurated, or new piece work prices are being established, time studies shall be made, which shall comprehend all elements entering into the doing of the work.

Piece work prices shall permit employes to earn from ten per cent (10%) to twenty-five per cent (25%) higher than the established hourly rates."

Rule 19 2 (b) provided:

"In change of the hourly rates, piece workers shall have added to or deducted from their earnings, the same number of cents per hour added to or deducted from the hourly rate."

Rule 19 2 (c) provided:

"Piece work prices once established will not be changed except as provided in paragraph (b), or as conditions for the performance of the work may change, in which case prices will be re-established which will continue to produce hourly earnings from ten per cent (10%) to twenty-five per cent (25%) higher than the regular hourly rate."

Rule 19 3 provided:

"Employes assigned to piece work shall receive, computed over the pay period, not less than the agreed minimum hourly rate."

Rule 20 provided:

"This agreement shall become effective October 1, 1929, and shall continue in effect until it is changed in accordance with the provisions of the Railway Labor Act."

Under somewhat different but comparable circumstances, this Division sustained a similar claim based upon the conclusion that any change in either method of payment could be made only in accordance with the agreement or Section 6 of the Railway Labor Act. See Award 1209. Contrary to the carrier's contention, any rules, supplemental agreements, or agreed interpretations that may appear in the shop crafts' agreement cannot in any manner control the agreement here involved.

In light of the record and foregoing applicable rules, the Division concludes that the agreement did not permit the carrier, as it did, to unilaterally change the method of payment theretofore established in conformity with provisions of the agreement. For the reasons heretofore stated, the Division concludes that the claim should be and is sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1950.