

Award No. 1751
Docket No. 1693
2-PRR-URRWA-CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PENNSYLVANIA RAILROAD (Western Region)

DISPUTE: CLAIM OF EMPLOYEES: 1. That within the meaning of the Controlling Agreement, the Carrier stands in violation thereof, due to the fact J. W. Sunday was unjustly dealt with at Cincinnati, Ohio, Undercliff Yard, Cincinnati Division, Western Region, Pennsylvania Railroad Company.

2. We claim J. W. Sunday, regularly assigned Car Inspector, third trick, tour of duty 11:00 P. M. to 7:00 A. M. should be compensated eight hours at one and a half times the applicable Car Inspectors rate for August 5, 1949.

3. We claim the work accrued August 5, 1949, is extra work. The assignment of a regularly assigned Carman Helper, H. F. Farran, to perform the duties in question is a violation of the Controlling Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to the dispute, dated July 1, 1949, and subsequent amendments, copy of which is on file with the Board and is, by reference hereto, made a part of this statement of facts.

At Cincinnati, Ohio, Undercliff yard, Cincinnati Division, Western Region, the Pennsylvania Railroad Company employes a force of carmen and car inspectors on a 24-hour basis.

J. W. Sunday, hereinafter referred to as the claimant, is employed as a car inspector, tour of duty, third trick, 11:00 P. M. to 7:00 A. M.

The Pennsylvania Railroad Company, hereinafter referred to as the carrier, unilaterally assigned H. F. Farran, carman helper, first trick, 7:00 A. M. to 3:00 P. M. to the duties of car inspector, first trick, August 5, 1949.

The employes filed claim for eight hours pay at the one and a half times the applicable car inspector's rate for August 5, 1949, for the claimant, J. W. Sunday.

The claim was processed on the property of the carrier, as provided for in the controlling agreement (See employes' Exhibit A).

The claim was denied at all levels, up to and including the general manager, who is the highest officer of the carrier designated to handle such disputes (See employes' Exhibit B).

performed the work he is entitled only to the pro rata rate. This principle has been aptly stated in the Opinion of Board in Award No. 4244, Third Division, Referee Edward F. Carter, which reads as follows:

"The right to perform work is not the equivalent of work performed insofar as the overtime rule is concerned. Whether the overtime rate be construed as a penalty against the employer or as the rate to be paid an employe who works in excess of eight hours on any day, the fact is that the condition which brings either into operation is that work must have been actually performed in excess of eight hours. One who claims compensation for having been deprived of work that he was entitled to perform has not done the thing that makes the higher rate applicable."

The carrier respectfully submits, therefore, that if your Honorable Board should decide, contrary to the facts, that the claimant is entitled to be paid for the time not worked by him on August 5, 1949, compensation therefor may not properly be granted at the punitive rate.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the United Railroad Workers of America, C. I. O., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the use of Carman Helper Farran to fill the car inspector vacancy in question was in accordance with Regulation 2-A-4, such action did not constitute a violation of the applicable agreement, and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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 respectfully 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 waived right of appearance at hearing thereon.

The employes contention that J. W. Sunday should have been used to perform the instant work is contrary to Regulation 2-A-4 of the controlling agreement which requires that the qualified employe be "working on the trick" in question.

AWARD

Claim of employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of March, 1954.