

Award No. 2033
Docket No. 1901
2-PRR-TWUA, CIO-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA, C. I. O.
RAILROAD DIVISION**

THE PENNSYLVANIA RAILROAD COMPANY—Eastern Region

DISPUTE: CLAIM OF EMPLOYES: 1. That at Baltimore, Maryland, Canton Yard, the thirty minute unpaid lunch period on the shift beginning 7:00 A. M. and ending 3:30 P. M. is not authorized by the Controlling Agreement.

2. That accordingly the Carrier be ordered to additionally and daily pay John W. Allison time and one-half on the minute basis for service performed from 3:00 P. M. to 3:30 P. M. retroactive to February 16th, 1952 and every day thereafter that this violation continues in effect.

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

At Baltimore, Maryland, Maryland Division, Eastern Region, the Pennsylvania Railroad Company, herein after referred to as the carrier, employs a force of car inspectors.

The aggrieved, John W. Allison, herein after referred to as the claimant, is employed at the seniority point, as a car inspector.

The claimant, in addition to inspecting for commodity loading, does all other car inspecting required of him. All car inspecting is done on a three trick basis, evidence of which is submitted as employes exhibit A.

There is no distinction made at Baltimore, Maryland, Canton Yard between commodity inspecting and other inspecting of cars except that the claimant's duties were largely confined to commodity cars. Evidence of which is submitted as employes exhibit B.

This dispute was processed on the property of the carrier including the general manager, the highest officer of the carrier designated to handle disputes, and denied, evidence of which is submitted as employes exhibit C.

the General Chairman on December 28, 1949, who is the highest designated officer having jurisdiction of the matter in question. The record clearly shows the Organization took no further action until December 12, 1951, when the General Chairman notified the Carrier of its rejection and the denial, and gave notice of appeal to this Board. This action by the General Chairman in filing and notifying the Carrier, approximately two years after denial, of their intention to appeal to this Board, is in our opinion an unreasonable time in which to take such further action, and certainly is not in compliance with the Railway Labor Act. See 2, 'General Purposes', as set in (4) and (5) of said section. There is nothing contained in the Act nor in the current Agreement which puts a time limit on the filing of an appeal to this Board from any denial of a claim by the Carrier, but such appeal must be prompt and orderly. Certainly the parties are entitled to a reasonable period of time in which to perfect an appeal to this Board, but a period of approximately two years in which the Organization elected to further assert its rights to this Board is unreasonable, and not within the purview of the provisions of the Railway Labor Act, and said claim should be denied. We are in accord with Award 4941, Carter Referee."

Also see Award No. 6495.

The carrier respectfully submits that for the reasons set forth in the awards referred to above, the denial of the claim became final when the organization failed to process it to the Board within a reasonable time.

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 the parties, 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 in this case would require the Board to disregard the agreement between the parties and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the claimant held an independent assignment on a one-shift operation and, therefore, properly was given thirty (30) minutes without pay for a meal period. Secondly, the carrier has established that the compensation allowed claimant for the work performed on the dates involved was entirely proper and in accordance with the provisions of the applicable schedule agreement; that the employes have not met the burden of establishing their claim in this dispute; 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 employes 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 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.

The question for our determination in the instant case is whether or not the claimant, who was regularly assigned as inspector of freight cars, Grade I, commodity inspector, District No. 2, Canton Yard, 7:00 A. M. to 3:30 P. M., with thirty (30) minutes for lunch, was entitled to a twenty (20) minute lunch period without deduction in pay. Regulation 4-F-1 (a) is relied on by the organization as the controlling contract provision. It is contended that the claimant was a part of a three consecutive shifts' operation in Canton Yard and therefore is entitled to be paid at the overtime rate for time worked beyond eight (8) hours after reporting for duty during the period between February 15, 1952, and January 5, 1953.

It is our opinion that the claim is valid and for the following reasons, considered together:

1. The claimant and the five other car inspectors on the first trick all worked in the same yard and evidently in the same general vicinity.
2. The other five car inspectors on the first shift were assigned an eight (8) hour shift with a twenty (20) minute lunch period without deduction in pay. These car inspectors were part of a three (3) consecutive shift operation.
3. The claimant performed "car inspector's work." The other five (5) men performed "car inspector's work."
4. Claimant's duties as car inspector were more limited in that the bulk of his car inspecting was normally restricted to cars for commodity shipments.
5. Claimant was occasionally used to perform the work of coupling air hoses when none of the other five (5) car inspectors was available.
6. Normally, the other five (5) car inspectors on the first trick performed the work of coupling air hose and preparing trains for dispatch from Canton.
7. Commodity cars are inspected on second and third tricks, but not as extensively as on the first trick. It was more practical to have the bulk of such work performed during daylight hours and it was for that reason the claimant was required to limit the preponderance of his time to the commodity cars.

AWARD

Claim sustained in accordance with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1955.