

Award No. 2104

Docket No. 1944

2-AT&SF-FO-'56

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:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Shop Watchmen are improperly assigned to perform the duties of Shop Watchmen at Topeka Shops, Kansas.
2. That accordingly the Carrier be ordered to desist from assigning other than Shop Watchmen to perform such duties.

EMPLOYES' STATEMENT OF FACTS: At Topeka Shops, Topeka, Kansas, the Atchison, Topeka and Santa Fe Railway System (hereinafter referred to as the carrier) assigns mechanics to work as shop watchmen. Examples are as following:

1. A mechanic assigned from 8:00 A. M. to 4:00 P. M., reports at 7:00 A. M. and performs service as watchman for the purpose of detecting fire, etc., from 7:00 A. M. to 8:00 A. M. From 8:00 A. M. to 4:00 P. M. he performs service as a mechanic. From 4:00 P. M. to 5:00 P. M., the mechanic performs service as a watchman for the purpose of detecting fires, etc. The mechanic is allowed straight time for 10 hours per day. He is paid watchman's rate of pay for 2 hours and mechanic's rate of pay for eight hours.
2. A mechanic assigned Monday through Friday, with Saturday and Sunday as rest days, is used to protect watchmen's service to detect fires on his rest days at watchman's rate of pay at straight time rate.

The carrier in their letter of February 4, 1955, admits these mechanics are assigned to a designated building or buildings as watchmen for the purpose of detecting fires, etc.

Shop watchmen are assigned at Topeka shop 24 hours per day, 7 days per week.

performed this work at Topeka as well as other shop points for more than thirty years; that they were performing it when the effective agreement between the parties was negotiated in 1945, and that they have continued to perform those duties up to the present time. Manifestly, the agreement does not even by inference grant this work to shop watchmen covered by the firemen and oilers agreement and apparently this fact has been recognized by the representatives of the organizations throughout the past ten years in which the agreement has been in effect as this case is the only one of which we have record where the contention has been advanced that "Fire Watch" should be performed by the regular shop, yard and gate watchmen.

Many awards of the various Adjustment Boards are to the effect that a practice long continued without protest is evidence of the interpretation that the parties have applied to the rule. For instance, in Award 1088 of this Division, with Referee Richard F. Mitchell assisting, it was stated:

"This case was submitted on a joint statement of facts. It is the contention of the employees that the carrier violated Rule 160 of the shop crafts' agreement by requiring the car inspector at Ingalt on to make a record of seals. The procedure followed at Ingalt on has been the same for sixteen years.

Repeated violation of a rule does not change it, but where there is doubt as to what the rule means, the interpretation placed upon it by the employees and the carrier for a long period of time clearly shows the intent and understanding of the parties. For sixteen years the present practice at Ingalt on has prevailed. In view of this long period of time in which there has been no complaint, this Board is of the opinion that the claim will have to be denied. See Award 974.

AWARD

Claim 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 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.

The Fire Department Brigade at Topeka is composed of volunteer employees from various crafts. Such work is performed before and after their regularly assigned working hours and on Saturdays, Sundays and Holidays. The duty of the Fire Department Brigade is to watch for fires and to correct conditions which create fire hazards. These duties differ from the duties of shop, gate and yard watchmen, whose duties are more in the nature of general police protection.

The carrier alleges (and it is not refuted) that members of the Fire Department Brigade have performed the duties in question for over thirty years and that they were performing said duties at the time the carrier and the organization negotiated the effective agreement in 1945.

The record does not indicate to this Board that, either by past practice or by specific rule provision, the employees represented by this organization are exclusively entitled to the work in question.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1956.

DISSENT OF LABOR MEMBERS TO AWARD 2104

The majority's Findings and Award are erroneously based on the assumption that the time the so-called "Fire Brigade" spent in watching the property is different from the function of Shop Watchmen outlined in Paragraph "E", Rule 1, of the Firemen and Oilers current agreement. As a matter of fact, the work is the same, and is performed by employees coming under the Firemen and Oilers Agreement during the majority of the time.

On page 5 of the carrier's submission, a letter addressed to General Chairman Wheatley and signed by Mr. Comer, Assistant to the Vice-President reads in part:

"The facts in this case are not exactly as stated in your letter. It is, of course, true that shop, yard and gate watching service is performed by employees covered by the Firemen and Oilers Agreement and is for the general protection of the property from whatsoever cause."

It is obvious from the above quotation that the work in question belongs to the Firemen and Oilers, and an ordinary reading of the record in this dispute will show that the watching service performed by the Fire Brigade is work within the scope of the Firemen and Oilers' Agreement, and properly belongs to employees working under the scope of that agreement.

George Wright
Edward W. Wiesner
T. E. Losey
R. W. Blake
Charles E. Goodlin