

Award No. 2565
Docket No. 2374
2-C&O-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Federated Trades)

DISPUTE: CLAIM OF CARRIER:

1. That Rule 60 of the Agreement of System Federation No. 41, Railway Employees Department A.F. of L. - C.I.O. is applicable only when employees covered by this Agreement are required by Carrier to check in and out and make out service cards on their own time.

2. That the Carrier may, without negotiation or concurrence of the Organization, discontinue requiring employees to check in and out and make out service cards on their own time; and that upon elimination of such requirement, the provisions of Rule 60 are no longer applicable.

CARRIER'S STATEMENT OF FACTS: Agreement between the carrier and the employees of the Six Shop Crafts, System Federation No. 41, Railway Employees Department, A.F. of L. - C.I.O., is on file with your Board and is here made a part of this submission by reference.

Rule 60 of this agreement reads as follows:

"At the close of each week, one minute for each hour actually worked during the week will be allowed employees for checking in and out and making out service cards on their own time."

Under the provisions of Rule 60, employees in shops and on repair tracks at a number of points on the property are required to check in and check out and make out service cards on their own time, for which they are allowed the arbitrary of one minute per hour provided by the rule. Approximately 64% of the shop crafts employees are in this category.

Moreover, the provision of this rule is unambiguous, it is not conditional, it is not optional, it is mandatory upon both parties to it and it contains no such words as "when" or "if". In fact, it constitutes a guarantee that each employe subject to the terms of the current agreement will take home on each pay day wages computed at the applicable hourly rate on the basis of one minute for each hour actually worked during the week.

Finally, it is manifest that the provisions in the carrier's Claim 2, in its entirety, is tantamount to asking that the said rule be stricken from the agreement, nullified, terminated or made null and void insofar as same would be of any value is concerned to the system federation as a collective bargaining condition of employment rule. The elimination of this rule, as sought by the carrier, is reprehensible, it is an insult to the principles of collective bargaining adopted by many American institutions and the carrier's action does, intentionally or otherwise, promote the reinstatement of the long discarded master and servant doctrine-principles. The carrier, however, may be viewed in better light if it sought to invoke the collective bargaining principles contained in Rule 185 and in Section 5 and Section 6 of the Amended Railway Labor Act, which rule of the current agreement, for ready reference, reads:

"EFFECTIVE JUNE 1, 1923. This agreement shall be effective as provided in the several decisions of the U. S. Railroad Labor Board, and agreements reached in conferences between representatives of the railroad and representatives of the employs, and shall continue in effect until changed as provided in Rule 183, or under the provisions of the Railway Labor Act."

The claim of the carrier is subject to be dismissed by the Honorable Members of this Division and the system federation respectfully requests that they unanimously do so.

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 issue presented by this claim has been decided by our Awards No. 1217 and 2105. The employes contend that such awards are erroneous in that they modify the rules involved by interpolating "when" or "if" into them.

The rule here is as follows:

"Rule 60. At the close of each week, one minute for each hour actually worked during the week will be allowed employes for checking in and out and making out service cards on their own time."

The parties certainly recognize that such allowance is in consideration of checking in and out on the employe's own time, because it is only paid to those who do so. The position of the employes is that the carrier may not unilaterally eliminate the allowance by altering the method and time of checking in and out.

This rule does not sustain that contention because it simply establishes the amount of pay allowance for employes who perform such service on their own time. It does not regulate which employes will do so nor when they will be required to do so. It does not appear that any other rule limits the rights of the carrier to decide those matters and, since such right is inherent in carrier's right to direct the working force as limited by the rules, the contention of the employes must be denied.

AWARD

Claim of the carrier sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.