

Award No. 3722
Docket No. 3548
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS
UNION OF AMERICA, A. F. of L.-C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: On July 18, 1956 the Organization met with the Carrier to set up the amount of extra board men (car inspectors) at each point on the property of the Carrier. This question was settled with the Carrier.

On August 16, 1956 a letter was sent to Mr. Hewlett, Master Mechanic-Car asking the Carrier to go along with the Organization and reduce this extra board in proportion to the reduction in force when men were furloughed. This was agreed to by the Carrier.

Now the Carrier is not living up to this agreement. When the extra board (car inspectors) was set up for Aliquippa there were thirty-three (33) car inspectors working at this point and four (4) extra men were agreed upon. Now the Carrier has furloughed eleven (11) men which means there should only be three (3) extra men. From the understanding that I have from the committee there are seven (7) extra men at this point or in other words three (3) more than originally agreed to. This means that the agreement made with the Carrier is being completely violated.

For this reason the Organization requests that Car Inspector Hawkey be compensated the punitive rate of pay for August 17, 1958 due to fact that extra car inspector Wynkoop worked this day and Mr. Wynkoop is number four (4) extra car inspector. The same pay for Car Inspector J. Zelonka for August 20, 1958 due to fact that extra car inspector Wynkoop worked this day and Mr. Wynkoop is number four (4) extra car inspector. The same pay for Car Inspector Gangloof for August 20, 1958 due to fact that extra car inspector Bouras worked this day and Mr. Bouras is number five (5) extra car inspector.

EMPLOYES STATEMENT OF FACTS: This case originated at Aliquippa, Pa. and is known as Case A-42.

Inspector Gongloff was regularly assigned on Job No. 10, second trick, Aliquippa Interchange, 3:00 P. M. to 11:00 P. M., rest days Tuesday and Wednesday. Since Wednesday, August 20, 1958, was one of the relief days of his position, Inspector Gongloff did not work on that date.

Throughout the progression of this case, the organization has failed to cite any rule of the carmen's agreement in support of their contention that the regularly assigned inspectors, in whose behalf this claim has been progressed, should have worked on the positions worked by Inspectors Wynkoop and Bouras on August 20, 1958.

In addition to the above, the organization here appears to be striving to secure, through a favorable award from your Board, something which they could not obtain through negotiations on the property. When the current carmen's agreement was undergoing revision during the year 1955, proposals were submitted by both the organization and the carrier on the various rules of the agreement, as well as any additional rules they desired to have included in the agreement. The organization's proposal in connection with the "Extra Board" rule contained the following as proposed paragraph 5:

"If extra employes are not used according to said contract or rule, regular employes who have relief days when extra employes are used, will be compensated for said days."

This paragraph was deleted from the organization's proposal during conference on May 27, 1955.

It is evident from the facts in this case that the organization is attempting to secure an award in behalf of regularly assigned Car Inspector Gongloff under circumstances identical to those covered in the language contained in their unsuccessful proposal.

CONCLUSION

The carrier has shown herein that the claim of Inspector Hawkey for August 17, 1958, fails for lack of proper evidence. The carrier has also shown that the quota of extra men set for Aliquippa, Pa., was not exceeded on August 20, 1958, but that, on the contrary, the extra board did not attain the figure set for that location. Further, the carrier has shown that of the first five extra car inspectors on the Aliquippa seniority roster, four of these men were employed on hold-down vacancies for definite periods of time and could not be used as extra men for these periods; also, that the organization has, in the past, recognized the right of extra men to work hold-down vacancies.

Awards of the National Railroad Adjustment Board have been cited in support of the carrier's position.

The carrier respectfully submits that the claims are without merit and requests that same be 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 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.

Parties to said dispute were given due notice of hearing thereon.

The employes assert that carrier agreed that four men should be assigned to the extra board at Aliquippa; that it was subsequently agreed that the number on the board should be decreased in proportion to the reduction in number of jobs; that the number of jobs had been reduced so there should be only three men on the board but that carrier has violated the agreement and had seven men on the board. A day's pay was claimed in behalf of each of the named assigned employes because of their not being used on August 17 and 20, 1958, instead of the fourth and fifth men from the extra board.

The employes have supported the claim by letter signed by the then master mechanic-car stating that four extra men were agreed upon to constitute the extra board at Aliquippa, and a subsequent letter stating that he was agreeable to their proposal to have a reduction in the number of extra employes carried on the board, proportionate to the general reduction in the jobs on the payroll at the time, and by sworn statement of the three committee members on October 30, 1958, that the foreman had agreed to reduce the extra board to three inspectors and subsequently to two inspectors but with the recalling of more men had spiraled the board to seven men.

In denial of the claim on the property the Master mechanic-car wrote, after reviewing their discussion:

"I am declining the presented claims which are of no merit due to the fact that we have never agreed, and will not, to a given number of men on the extra board."

On appeal to the director of personnel the claim was denied by letter in pertinent part as follows:

"During our conference your committee pointed out that when the extra list was set up at Aliquippa there were 33 car inspector assignments at Aliquippa and it was agreed that there would be 4 extra car inspectors at this point. Further, that at the present time there is approximately 22 inspector assignments at Aliquippa, therefore the number of men on the extra list should have been correspondingly reduced in accordance with the understanding had with former Master Mechanic-Car Hewlett.

It is understood that since this case arose the number of men on the extra board at Aliquippa has been reduced and is now in accordance with the understanding had with former Master Mechanic-Car Hewlett."

In its submission to the Division carrier defends as to the claim for August 17 on the ground that no record has been found that the number four man on the extra board worked on that day. That defense was not raised until after the claim had been submitted here and comes too late. In further defense carrier sets out the names of five members of the extra board but asserts that the first two should not be counted as members because they were holding down vacation vacancies, hence were no longer considered as extra employes.

This seems quite contradictory to the contention of this same carrier, in its submission in the dispute with the same organization resulting in Award 2612, where in its definition of extra employes it says that they are employed to fill positions of regularly assigned employes "who, because of illness, vacations, personal business or other reasons," do not report for duty.

Carrier is bound by the admission of violation of the agreement made by its then Director of Personnel in denial of the claim.

Compensation for work not performed should be at pro rata rate.

AWARD

Claim sustained to extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chcaigo, Illinois, this 29th day of March, 1961.