Award No. 4349

Docket No. 4209

2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the 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: 1—That for the period December 14, 1960 thru April 11, 1961 inclusive, the current agreement, particularly Rule 48, paragraph (a) was violated when the Carrier, without agreement or concurrence of the local committee, did increase the number of employes on the car inspectors extra board.

2—That under the current Agreement the Carrier improperly denied to those employes listed on the Car Inspectors Overtime List the right to perform work when the agreed upon number of extra board men was exhausted on each date.

3—That, accordingly, the Carrier be ordered to compensate each Car Inspector (Carmen) on the car inspectors overtime list, for each date in excess of the agreed upon number of extra men was used on the extra board, claim to be paid to the car inspectors on the Overtime List who were available to be used in accordance with the Memorandum of Agreement dated December 2, 1957. Claim is for eight (8) hours at time and one-half for each date.

EMPLOYES' STATEMENT OF FACTS: For the period December 14, 1960 thru April 11, 1961, inclusive, the Pittsburgh and Lake Erie Railroad Company, hereinafter referred to as the carrier, did violate the current agreement regarding the number of men to be carried on the car inspectors extra board at the Youngstown-Struthers, Ohio seniority district by unilaterally increasing the number of men on the extra board.

On November 25, 1960 an agreement was reached with Mr. J. Peters, Car Foreman at Struthers, Ohio and the local union committees in accordance with provisions of Rule 48(a), to have eight (8) men on the car inspectors extra board. During the period of this claim the number of men on this extra board was increased and/or decreased, all in accordance with Rule 48(a).

The proper rate of compensation for time not worked is the pro rata rate."

AWARD 3410:—"* * * The proper rate of compensation for work not performed is the pro rata rate."

AWARD 3444:—"* * * The claim as presented for electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore, order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of his work, at the pro rata rate."

See also Awards 3256, 3259, 3272 and others of the Second Division, as well as Award 3193 and numerous others of the Third Division, National Railroad Adjustment Board.

CONCLUSION:

Carrier's position may be summarized as follows:

1. The blanket claim of the organization is vague, indefinite and lacking in specificity.

2. Rule 48 (a) of the agreement does not contain provision for penalty.

3. Carrier's available records indicate a need for the number of men carried on the extra list.

4. The organization's claim for punitive rate is not supported by the agreement.

5. Awards of the National Railroad Adjustment Board support carrier's position.

All data in connection with this dispute have been made known or available to the organization during conference or otherwise.

Carrier respectfully submits that the claim is without merit and should be dismissed or 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 claim, as it comes to this Board, is stated in the caption. However, as first presented on the property, it read:

"Claim is herewith presented in behalf of available extra board

car inspectors, if none available on a given date, then this claim for such date is presented in behalf of the available car inspectors on the car inspectors overtime board . . ."

To the original claim the carrier responded as follows:

"Please refer to yours of February 11, 1961 presenting blanket claim for extra board car inspectors and/or regular car inspectors on the yard overtime list for eight hours at the applicable rate of pay, for each date in excess of eight (8) car inspectors were used on the extra board.

"This claim can not be considered until specfic cases are furnished indicating dates, names, etc."

The organization's response to the carrier's initial rejection was as follows:

"It is noted that your basis for denial of our claim is based upon your allegation that the names of claimants and dates of violations are not shown. We desire to point out to you that at the time this claim was presented (February 11, 1961) the violation was still in progress, in fact, not until April 12, 1961 did the violation cease.

"Therefore, it was not possible at the time of the original presentation of this claim, to name all the claimants and dates of violations. Your attention is directed to the fact that this is a continuing claim. Since the carrier did cease to violate the agreement effective April 12, 1961, we are now in a position to furnish you with the names of claimants and dates of violation in this case."

It will thus be seen that we are confronted with contentions that the claim is blanket and indefinite and that it could not be otherwise because it was continuing in character, notwithstanding that Article V, Section 1(a) of the National Agreement of August 21, 1954, specifically requires that, "All claims or grievances must be presented by or on behalf of the employe involved."

We are not unmindful of the fact that there is authority for the proposition that it is not always necessary that the claimant or claimants be identified by name. In Award No. 2195 it was held that the claim was sufficient where a specified number of designated groups of Employes were improperly furloughed on a given date, the Board observing that a ministerial examination of the available records would have disclosed the names of those entitled to be paid. That Award cannot be considered as a controlling precedent in the instant case, however, where no date when the violation occurred is fixed, even the number of employes affected is not disclosed, and the groups of Employes involved are referred to in the alternative. Neither is it any answer to say that the claim was a continuing one. A continuing claim may be proper where a specific violation is definitely charged, the means of identifying the claimants is adequately disclosed and the violation has not come to an end, but such is not the situation here.

Mindful of the lack of uniformity in the numerous awards dealing with the sufficiency of claims, we are reluctant to add to the confusion by extending the application of Award No. 2195 beyond its terms. We therefore hold that the claim in the instant case is insufficient to invoke the jurisdiction of this Board. See: Awards Nos. 3576 and 4166.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4349

We must dissent from the findings of the majority that this claim was indefinite and insufficient to invoke the jurisdiction of this Board.

The claimants could without question be identified from the carrier's records as was pointed out by the majority in Award 2195. This case is clearly in point with the dispute resolved in Award 2195, and should have received the same disposition.

James B. Zink

E. J. McDermott

T. E. Losey

C. E. Bagwell

R. E. Stenzinger