

Award No. 4507

Docket No. 4300

2-N&W-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman E. L. Clark and Helper Carman D. L. Price were improperly compensated while on vacation during January 1961.

2. That accordingly, the Carrier be ordered to additionally compensate these two employees at the straight time rate for 2 hours.

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly assigned employees of the carmen's craft on the Norfolk and Western Railway at Elmore Shop Track, Elmore, W. Virginia. E. L. Clark's vacation was from January 2 to January 20, 1961. D. L. Price's vacation was from January 3 to January 21, 1961, a total of 15 days. These men when working in the shop are allowed at the close of each week one (1) minute for each hour actually worked for checking in and out. The claimants, while on vacation were not allowed the checking in and out pay.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

POSITION OF EMPLOYEES: It is the position of the employees that the claimants should have been compensated at the straight time rate of pay while on vacation equally to the amount they would have received if they had remained in the shop, which is provided for in the meaning of rule 47, reading as follows:

"At the close of each week one (1) minute for each hour actually worked during the week will be allowed employees for checking in and out."

Furthermore, the vacation agreement of December 17, 1941, as amended to August 21, 1954, Section 7, paragraph (a) provides that:

"This is clearly an arbitrary provision for the payment for effort expended by the employes when such is done on their own time. The rule does not require the Carrier to have the checking in and out and the making out of service cards on the employe's own time. If it is done on the Carrier's time, the employes receive pay for time actually consumed by these efforts."

In Second Division Award No. 2565, dated July 17, 1957, the board in its findings said:

"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."

The language in the preceding board awards cited, strengthens the belief of this carrier that Carman Clark and Helper Carman Price are not entitled to two hours at pro rata rate for checking in and out while they were on vacation under rule No. 47, as it goes without saying, they did not check in and out while on vacation, nor were they required to fill in or sign service cards covering their vacation period, prior to or following their vacation. Necessary entries on service cards of men, while on vacation, are handled by their supervisor.

Under article 7, section (a) of the vacation agreement, as hourly rated employes, they were allowed eight hours each per day at the pro rata rate for the full number of days on vacation they were entitled to. Section (b) is not applicable, since they are not paid a daily rate under their contract.

Carrier has shown this claim is without merit and respectfully requests that it 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 waived right of appearance at hearing thereon.

Claimants are Carmen employes of the Carrier at the Elmore Shop Track, Elmore, West Virginia. Each claimant had a 15 day vacation in Janu-

ary 1961. While on vacation they were not allowed "checking in and out pay" which they are here claiming.

Rule 47 of the controlling agreement reads as follows:

"At the close of each week one (1) minute for each hour actually worked during the week will be allowed employees for checking in and out."

It is the contention of the Claimants that under Section 7 (a) of the vacation agreement of December 17, 1941, and its agreed to interpretation of June 10, 1942, that they are entitled to the additional compensation called for under Rule 47 (supra.)

Carrier contends that the arbitrary provided for in Rule 47 is based upon time actually worked, and that it is not a part of an employees daily compensation as contemplated by the Vacation Agreement.

The agreed to Interpretation of Article 7(a) of the Vacation Agreement reads in part as follows:

"This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by this carrier than if he had remained at work on such assignment, * * *."

We hold that Rule 47 augments the daily compensation of the employees subject to this Agreement as the term "daily compensation" is used in the Vacation Agreement and the agreed to interpretation of that Agreement.

Our Awards 1217, 2105 and 2565, cited by the Carrier in support of its position were concerned with the interpretations of rules involving checking in and out on the employees' own time or during assigned hours. The instant Rule (Rule 47) is couched in different wording than the rules which we consider in the cited Awards, and it establishes a true arbitrary which becomes a part of the employees' daily compensation.

AWARD

Claim 1. Sustained.

Claim 2. Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 4507

In this dispute the Employees contended that the provisions of Rule 47 provided for checking in and checking out pay for the claimants while they were vacationing, and this Division so held.

In this award the majority held:

"We hold that Rule 47 augments the daily compensation of the employes subject to this Agreement as the term 'daily compensation' is used in the Vacation Agreement and the agreed to interpretation of that Agreement."

This is an erroneous conclusion. Rule 47 provides compensation only when an employe is required to check in and out on his own time, and it is a known fact that an employe does not check in and out while on vacation. The clause "for each hour actually worked" (emphasis ours) is the basis to calculate the benefits an employe receives under this rule on the days that he renders service to the Carrier. An employe on vacation is not rendering any service to the Carrier and, therefore, does not qualify for the benefits under this rule.

Our Award 1217 held:

"* * * the rule requires the allowance will be made when the employes check in and out and make service cards on their own time. When not required to do so on their own time, no allowance under the rule is justified."

The majority did not reach a just determination in this dispute, and for the reasons offered, we dissent.

P. R. Humphreys

H. K. Hagerman

F. P. Butler

W. B. Jones

C. H. Manoogian