

Award No. 4660

Docket No. 4668

2-C&O-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Chesapeake and Ohio Railway Company violated the current agreement, particularly Rules 7 and 9, when they instructed and required Crane operators to climb ladder on overhead Crane before the starting time of the regularly assigned shift and at lunch period before the lunch period expired. Russell Car Shops, Russell, Kentucky.

2. That accordingly the Chesapeake and Ohio Railway Company be ordered to additionally compensate the following Crane operators, E. E. Killen, W. T. Wade, H. L. Nunnally, J. D. Vance, W. E. Adkins, L. R. Bear, C. C. Harr, W. P. Nichols, Jr., G. G. Crum, D. E. Crawford, S. W. Templeton, R. D. Hale, E. R. Marshall, L. E. Mullins and R. E. Adkins, one hour (1) in advance of their starting time of their regularly assigned shift and thirty (30) minutes lunch period at the Crane operators applicable straight time rate of pay February 8, 1963, each day five days each week subsequent to February 8, 1963, until such continuing violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, owns and operates a car repair shop at Russell, Kentucky, known as the Russell Car Shops, at which it employs a number of crane operators which includes the aforementioned named Crane operators, hereinafter referred to as the claimants.

On February 8, 1963, the carrier ordered the claimants to begin work in advance of their regular starting time and also to take less than their assigned thirty minute lunch period by beginning work in advance of the assigned lunch period. The carrier, however, refused to additionally compensate the claimants for this service.

Claim was filed and progressed on the property in accordance with the agreement rules with all carrier officers authorized to handle grievances with the result that all of them declined to adjust it.

This case shows again that Rules 7(d) and 9(a) here under consideration are intended to cover service only, and not the travel which is incident to getting to the point of employment. Also significant is the fact that the claim was denied even though the practice was changed, whereas in the instant case the carrier merely re-issued instructions requiring the employes to conform to what has always been required of them and all other employes.

What the employes are seeking in this claim is a new application of old rules which have never been applied or understood in the manner they are urging the Board to endorse. The changes which the claim attempts to secure cannot be had by erroneously construing the clear language of the rules, but must be acquired through the procedures of Section 6 of the Railway Labor Act.

Conclusions

The Carrier has shown:

(1) That the applicable rules for more than 40 years have contemplated that employes will be at their on-duty points at starting time and remain until quitting time.

(2) That the on-duty point for the crane operators is the control cab of the cranes, the same as it has been since the carrier has had overhead electrical cranes in use.

(3) That the crane operators are treated the same as other employes of the Shop Crafts at all points on the Carrier's system and the same as employes of other crafts, and other Carriers.

(4) That the claim is without merit.

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.

This claim is that Carrier "violated the current agreement, particularly Rules 7 and 9, when they instructed and required Crane operators to climb ladder on overhead Crane before the starting time of the regularly assigned shift and at lunch period before the lunch period expired."

The Carrier states on pages 3 and 4 of its submission:

"The grievance centered upon the time consumed by the crane operators climbing the ladders to and from the cranes, it being the Employes' contention that their point for going on and off duty was on the ground beneath the cranes.

If it is determined that claimants were working or performing service for Carrier while going to and from their cranes, as they contend, the claim is valid."

What constitutes work was indicated by this Division in Award 3955, when it said:

“As a general rule, the term ‘time worked’ refers to time spent by an employe in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business. See: Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U. S. 590, 698; 64 S. Ct. 698, 703 (1944); Anderson v. Mt. Clemens Pottery Co., 328 U. S. 680, 691-2; 66 S. Ct. 1187, 1194 (1946).”

Certainly the climbing and descending of ladders to overhead cranes involves physical exertion, and not mere waiting to start work.

It necessarily follows that under Rule 7(d) each claimant should be compensated in the amount of one hour per day for each day that he performed the service of climbing the ladder to his crane in accordance with instructions before his starting time; and that under Rule 9(a) each claimant should also be compensated in the amount of thirty minutes per day for each day that he worked by climbing or descending the ladder to his crane in accordance with instructions during his lunch period.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.