

**Award No. 5234
Docket No. 5010
2-NYNH&H-EW-'67**

**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. 17, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, the Carrier improperly and unjustly held Electricians E. Muldoon, L. Doremus, W. Hunter, W. Leonard, F. Hughes, G. Hannaford, S. Helton, F. Wojtowicz, out of service on October 2, 1964, and G. Tatum, L. Kuti from October 2 and 3, 1964.

2. That accordingly, the Carrier be ordered to compensate the aforesaid employees at their applicable straight time rate of pay for all time lost during the aforesaid period.

EMPLOYEES' STATEMENT OF FACTS: Electricians E. Muldoon, L. Doremus, W. Hunter, W. Leonard, F. Hughes, S. Helton, G. Hannaford, F. Wojtowicz, G. Tatum, L. Kuti, hereinafter referred to as the Claimants, are regularly employed by the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the Carrier, as electricians and regularly assigned at the Stamford Engine House, Stamford, Connecticut working the middle trick, hours 3:00 P. M. to 11:00 P. M.

On October 1, 1964, during the first trick the Superintendent of Shops notified the Local Committee of a vacancy on the third trick, and requested them to furnish an electrician from the overtime list to work overtime on the third trick. At about 1:30 P. M. the Local Committee reported to Superintendent of Shops that they were unable to furnish an electrician to cover the overtime assignment for the third trick.

Thereafter, the Management contacted each electrician on the first trick, and offered them the opportunity to work overtime on the third trick. Each man, in turn, refused the overtime work.

The claim should be denied.

(Exhibits not reproduced.)

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.

On Thursday, October 1, 1964, the Claimants were suspended at the end of their shift on the ground of insubordination, and were given written notice next day of a hearing of the charge on Monday, October 5th. After the hearing they were found guilty of the charge, but were disciplined only to the extent of their suspension from service pending the hearing, which amounted to one day for eight Claimants and two days for the other two.

The claim is that their suspension was in violation of the current Agreement, and particularly of that part of Rule 34, which reads as follows:

"No employe shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, or as disciplined following a hearing shall not be deemed a violation of this rule."

The facts are that on October 1, 1964, an electrician on the third shift reported off for illness, and the Local Committee was asked for an electrician to fill the vacancy on an overtime basis. There was another illness vacancy on the shift which had developed three days prior, but the Superintendent of Shops considered it necessary to fill only the one vacancy on this occasion. In its submission the Carrier states:

"At about 1:30 P. M. on October 1 the Local Committee reported back to the Superintendent of Shops that they could not furnish one employe, as requested, but that if the Management would fill both vacancies, they could furnish two men. This ultimatum was rejected by Management, whereupon the Local Committee repeated their statement that they could not furnish one man."

The Employes strenuously denied this in their rebuttal, but had confirmed it at the hearing by a written statement which included the following:

"The local committee were asked by Mr. Mayo on Oct. 1 to meet him in his office in regard to the last trick overtime. At this time the committee asked Mr. Mayo if he intended to cover all service rates as he had previously agreed to do. Mr. Mayo said he had the right to break this agreement and was doing so. He told the committee he wanted one man for that night to cover one of the two above rates.

The committee contacted all the men on the roster and was unable to get a man to work. Mr. Mayo was so notified of this. This took place in the afternoon of October 1."

It is apparent from this and other evidence that the Local Committee believed that it had a commitment from the Superintendent of Shops by which he had relinquished the Carrier's right to determine its needs for any certain occasion. No rule or practice has been cited in this respect.

Upon the Organization's failure to supply an overtime electrician the Carrier proceeded to contact in seniority order all electricians not on the third shift, each of whom refused the overtime work. The time being short, the Carrier then contacted in reverse seniority order the Claimants, who were on the premises filling their regular second shift assignments, and on each employee's refusal then ordered him to perform the overtime, which he refused to do.

These facts and other evidence in the record make it obvious that each of the Claimants was guilty of insubordination. (See Awards 2118, 2714 and 3310), and that the discipline imposed was by no means excessive.

It is contended also that this was not a proper case for suspension under Rule 34. But the hearing was prompt and the charge was clearly proven. It is not apparent how a transportation business can be successfully maintained without prompt action in the face of a general refusal to follow orders. We conclude that this was a proper case for suspension pending the hearing, in accordance with Rule 34. See Awards 1544, 1789, 2787, 3310 and 3828. Thus the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1967.