



Award No. 5693

Docket No. 5387

2-PC(NYNH&H)-FT '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(FEDERATED TRADES)**

**PENN CENTRAL COMPANY
(New York, New Haven & Hartford R.R. Company)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current Agreement, Rules IA, System Federation Agreement, Rules 2A Firemen & Oilers' Agreement and letter of Agreement of October 21, 1958, when they arbitrarily changed the following identified employees' work assignment on March 8, 1964 from a five day work assignment Monday thru Friday, with rest days Sunday and Saturday, to seven day assignments with rest days other than Sunday and Saturday.
2. That accordingly the Carrier be ordered to:
 - a) Restore these employees to their former work week assignments of Monday through Friday with rest days Sunday and Saturday.
 - b) Additionally compensate the following enumerated employees at the straight time rate retroactive to March 8, 1964, for having been deprived of the right to work their regular assigned days held prior to March 8, 1964.
 - c) Additionally compensate these employees at the overtime rate for the services which they were required to perform on each Sunday and Saturday, retroactive to March 8, 1964.
 - d) Additionally compensate the following enumerated Mechanical and Electrical Inspectors at time and one-half for the sixth day work retroactive from March 8, 1964.
 - e) J. Croumey—Mechanical Inspector
O. Shorkey—Mechanical Inspector
P. Zaverskas—Mechanical Inspector
E. Hulse—Mechanical Inspector

J. Hughes—Electrical Inspector
W. Suprenant—Electrical Inspector
C. DeVito—Electrical Inspector

f) Additionally compensate the following enumerated employees in the amount of four hours pay at the straight rate because of:

- 1) Required to change shift because of the Job Abolishment of March 8, 1964.
- 2) Assigned by the Carrier on March 7, 1964, and re-required to change shifts.

NOTE: Employees involved in Items 1, 2, 2(a), 2(b), 2(c) and 2(f) are identified in four (4) page attachment to Notice Letter filed with Board under date of October 26, 1965.

EMPLOYEES' STATEMENT OF FACTS: On March 8, 1964, the Carrier arbitrarily abolished the regular established five day position at the New Haven Maintenance of Equipment Shop, and unilaterally established a seven day operation requiring the employees to work Saturday and Sunday on periodic inspections I.C.C., and other scheduled maintenance not here-to-fore performed on Saturday and Sunday at this shop for a period extending over sixteen years, from date of shop opening until March 8, 1964.

The Carrier by its arbitrary action violated the Controlling Agreement, Rules 1A, System Federation No. 17 Agreement Rule 2A Firemen & Oilers Agreement, letter of Agreement of October 21, 1958, signed by J. J. Gaherin, Vice-President of Labor Relations & Personnel, Rules 11 and 13A of the System Federation 17 Agreement, and Rule 7, Firemen & Oilers Agreement.

DESCRIPTION OF OPERATION

The Carrier maintains and operates at New Haven, Connecticut a shop facility known as the New Haven Maintenance of Equipment Shop, and/or New Haven Diesel Shop, hereafter referred to as the M. of E. Shop. This shop is the largest locomotive repair shop on the Carrier's property. The facility handles all work on locomotives from minor running repairs up to and including classified repairs. (Complete over-hauls and rebuilding of locomotives, engines.)

The instant dispute involves the Carrier's arbitrarily arranging shop forces to establish a seven day operation on periodic I.C.C. inspections and other scheduled maintenance.

This work is repairs and maintenance that is scheduled by I.C.C. requirements or Carrier requirements on a monthly, three month, six month, annual one year, eighteen month, etc. basis. The scheduling of these locomotives for this type of inspection and repairs can be and is most times scheduled months in advance. The work referred to is in no way connected with work known as running repairs, breakdowns of equipment needing immediate attention.

4. The letter of October 21, 1958, upon which the Employees placed their reliance throughout discussions on the property, was not an agreement and, therefore, cannot have been violated.

For all of the reasons contained herein we respectfully request that the claim 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 employees 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.

Petitioner contends that Carrier arbitrarily and capriciously changed long established work assignments of the claimants herein in violation of the applicable Agreements between the parties.

In the first instance, Carrier contends that the claim was not timely progressed on appeal to the General Mechanical Superintendent and is barred under the provisions of Rule 34-A of the Shop Crafts Agreement and Rule 19-A of the Firemen's and Oilers' Agreement.

The record reveals that the instant claim originally was filed with Carrier's Superintendent of the Maintenance of Equipment Shop under date of May 1, 1964. Said Superintendent denied the claim by letter dated June 12, 1964, which Carrier contends was hand delivered on that date at a meeting of local committeemen concerning the claim with the exception of one individual who was not present and to whom a copy was mailed and postmarked June 15, 1964.

Another meeting was held with the local committee on Monday, June 15, 1964 at which the Superintendent supplemented his decision of June 12, 1964 with an additional letter concerning an alleged Agreement of October 21, 1958. On June 19, 1964, the local committee sent a letter to the Superintendent confirming the meeting on June 15, 1964 "relative to your letter of decision of June 12, 1964 involving our claim of May 1, 1964."

By letter dated August 10, 1964, but postmarked August 13, 1964, Petitioner appealed the Superintendent's decision of June 12, 1964 to Carrier's General Mechanical Superintendent. Thereafter, the Acting General Mechanical Superintendent rendered a decision on October 2, 1964 denying the claim on the basis of the procedural defect as well as the merits of the dispute.

On November 9, 1964, Petitioner for the first time challenged the effective date of the initial denial of the claim on the property and urged that the letter of June 12, 1964 had not been delivered to the local com-

mittee until June 15, 1964. A statement dated September 30, 1964 to this effect signed by five committee members was submitted to Carrier on December 21, 1964.

Despite conflicting evidence, we must conclude that Petitioner initially considered the Carrier's denial effective on June 12, 1964. This is evident from the earlier reference by Petitioner to Carrier's letter of decision of June 12, 1964 contained in Petitioner's letter dated June 19, 1964. Furthermore, it is unrefuted that Carrier's practice was to deliver decisions to committeemen on the date of preparation.

The effective Rules of the applicable Agreements clearly provide that a disallowed claim or grievance must be appealed in writing within sixty (60) days from receipt of notice of disallowance and that failure to comply will constitute a bar to consideration of the merits of the particular claim or grievance. Accordingly, the instant claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.