

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

Referee, Wm. H. Spencer

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYEES**

**MAINE CENTRAL RAILROAD AND PORTLAND TERMINAL  
COMPANIES**

**DISPUTE.**—"Claim of P. J. Kilmartin for \$1.76 less ten percent (10%) representing three hours pay account of attending an investigation as a witness for the Railroad."

**FINDINGS.**—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The Carrier and the employee involved in this dispute are respectively carrier and employee 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.

The parties to said dispute were given due notice of hearing thereon.

The case being deadlocked, Wm. H. Spencer was called in as Referee to sit with the Division as a Member thereof.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Kilmartin's regular position is that of a Yard Clerk at Rigby with assigned hours 11:00 p. m. to 7:00 a. m., basic daily rate \$4.71 less 10%.

"At 3:00 p. m. on April 10, 1934, he appeared as a witness for the railroad at an investigation conducted by the Company in the Superintendent's office, being ordered to be present by his superior officer, Assistant General Yardmaster, J. Leaf."

The claim is based on Rule 24 (b) of an agreement between the parties, bearing the date of July 7, 1927:

"Except as provided in these rules, employees notified or called to perform work not continuous with, before or after the regular work period shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

If this were a controversy of first impression, it might properly and justly be decided that the petitioner's service was "work" within the meaning of Rule 24 (b) of the Agreement. In view of the fact, however, that the term, as it has been used in collective agreements in the railroad industry, has usually been construed to mean work of the type to which an employee is regularly assigned, the Third Division is of the opinion that Rule 24 (b) does not apply to special services of the kind performed by the petitioner, even though they were performed at the request of the Carrier.

**AWARD**

The claim is denied.

By Order of Third Division:

**NATIONAL RAILROAD ADJUSTMENT BOARD.**

Attest:

**H. A. JOHNSON,**  
*Secretary.*

Dated at Chicago, Illinois, this 2nd day of January 1935.

**CONCLUSIONS OF THE THIRD DIVISION.**—It is the conclusion of the Division that the grievance of Conductor Bringolf is a "pending and unadjusted" case within the meaning of the Amended Railway Labor Act of June 21, 1934, and that the Division has jurisdiction to hear the complaint on its merits.

While the Board should be cautious in the assertion of its jurisdiction, it should not be so cautious as to impair its usefulness in the settlement of disputes. Certainly in genuinely doubtful cases, the Board should resolve the doubt in favor of the petitioner. If in this case, for instance, the Board should refuse to assume jurisdiction over Conductor Bringolf's complaint, Bringolf under the Railway Labor Act of 1934 would have no recourse to courts with a view of getting a decision as to the correctness of the Division's interpretation of what constitutes a "pending and unadjusted" case. On the other hand, if the Division entertains jurisdiction over this dispute and renders an award in favor of the petitioner, the carrier can readily secure judicial review of the correctness of the Board's decision.

There is genuine doubt whether the Bureau of Industrial Relations, as revised following the enactment of the Railway Labor Act of 1926, complied with the spirit or letter of Sections 2 and 3 of the Act as an adjustment board. For the purpose of this decision, however, it may be assumed that the Bureau was a *de facto*, if not a legally constituted, adjustment board. To this organization, Conductor Bringolf, for reasons good or bad, voluntarily chose to present his grievance. On the assumption that the Bureau was a *de jure* or *de facto* adjustment board, Bringolf should not now, except for good cause, be permitted to reopen the controversy before the National Railroad Adjustment Board. The Division, however, is of the opinion that the petitioner has shown good cause why his grievance should be reheard on its merits.

When Bringolf elected to rest his case with the Employee Representation Plan, it was on condition that the hearing should be conducted in accordance with the letter and spirit of the Plan and its Procedure. Neither the Plan nor its Procedures contemplated, expressly or by implication, that the management would interfere with the hearing on a grievance while it was passing through the joint committees to the Bureau of Industrial Relations. In this case, however, the management, following a unanimous recommendation of the Zone General Committee that the petitioner be reinstated, bluntly announced that it had reviewed the evidence and could not reinstate him. At this juncture, the management, if dissatisfied with the recommendation, might itself have appealed to the Bureau of Industrial Relations. Although it is arguable that the management had the right to disregard the recommendation of the Zone General Committee, it did not stop at this point in the exertion of influence over the hearing of the controversy. The decision of the Bureau of Industrial Relations, to which the petitioner finally appealed, carried the statement that the management had reviewed the evidence and could not reinstate Conductor Bringolf.

In these circumstances, it is the opinion of the Third Division that the complaint of Conductor Bringolf is a "pending and unadjusted" case within the meaning of the Amended Railway Labor Act of 1934.

#### AWARD

Let the complaint of the petitioner be heard on its merits.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,  
*Secretary.*

Dated at Chicago, Illinois, this 2nd day of January 1936.