Award No. 3338

Docket No. CL-3347

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When, without conference with the Committee, it ordered employes of the Manager of Lighterage and Stations Office, No. 6 Broadway, New York City, to work additional time beyond their regular assigned hours of service, both in the Lighterage and Eastbound Billing Departments, effective September 6, 1945.

2. That employes affected shall be properly compensated for time worked beyond their regular assigned hours from and after September 6, 1945 until the violation is corrected.

3. That the Carrier shall be required to restore regular established working hours and practice.

EMPLOYES' STATEMENT OF FACTS: "On September 4, 1945, a bulletin was issued by the Manager of Lighterage and Stations, Lehigh Valley Railroad Company, changing hours of service in the No. 6 Broadway Office, New York City, from seven and one-quarter (7¼) hours to eight (8) hours per day, Monday to Friday inclusive and, from four (4) hours to eight (8) hours on Saturday. This condition was made effective September 6, 1945, has not been rescinded and the bulletin issued was as follows:

LEHIGH VALLEY RAILROAD COMPANY

"New York, N. Y., September 4, 1945.

NOTICE

TO ALL CONCERNED:

Effective Thursday, September 6, 1945, office hours will be from 8:15 AM to 12:00 Noon and 1:00 PM to 5:15 PM.

T. J. McLernon
Mgr. Ltge. & Stas. NYH."

exception. Carrier contends any local arrangement, such as existed in this case, would not nullify the rule, but could be changed as the circumstances warranted.

Attention of the Board is called to the fact the action taken in having the clerks in this office work a regular eight-hour day was not an arbitrary action, without a justifiable reason, but, the action was taken when the work could no longer be performed properly with the reduced hours in effect. When conditions in the office improved, a part of the concession formerly enjoyed by the clerks in this office was voluntarily restored by permitting them to work only seven hours and forty-five minutes per day, instead of eight hours per day, which evidences the good faith of the Carrier in the necessity for the change of hours.

In the light of the foregoing facts and circumstances set forth in this submission, it is the contention of the Carrier that the claim of the Employes should be denied.

OPINION OF BOARD: For over twenty-five years prior to September 6, 1945, the regular assignment of working hours for the employes in the Lighterage and Stations Office, No. 6 Broadway, New York City, was 7¼ hours Monday through Friday, and four hours on Saturday. Effective September 6, 1945, the Carrier lengthened the working hours to eight hours, but continued to give the employes the half day on Saturdays. On and after January 25, 1946 there was established a work day of 7¾ hours.

The employes contend that the changes in working hours since September 6, 1945 were contrary to the past understanding and practice in effect for a period of over twenty-five years and ask that the former working period of 7¼ hours be resumed and that they be given compensation for the extra time worked.

On the other hand the Carrier contends that this practice was a concession or a gratuity to these employes at some time prior to the date of the current agreement of March 1, 1939 and under Rule 14 of that agreement it has the right to require these employes to work eight hours a day.

That rules reads:

> "Except as otherwise provided in this agreement, eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work."

This Referee has been cited many awards by both parties, but in most of them the facts and issues are not similar, and are only authority upon general principles.

This Division of the Board is of the opinion the facts and issues in Award No. 2436 are on all fours with the facts and issues in this dispute and therefore controlling. In that case the employes in certain offices had worked less than eight hours a day for a period of twenty-five to forty years, yet that carrier paid these employes for an eight-hour day.

That carrier sought to do away with practice contending that Rule 98 of its agreement required eight hours work and the places where it had been the practice to work less than eight hours were favors or gratuities on its part to the employes. The Rule read:

> "Except as otherwise provided in these rules, eight consecutive hours, exclusive of meal period, shall constitute a day's work."

In that docket the record shows that at these places the employes had worked less than eight hours for a period of twenty-five to forty years. Also, this practice had been in effect for fifteen years after the current agreement had been in effect. In ruling that claim the Opinion stated:

> "But the failure of the parties to deal directly with these practices in subsequent agreements and their recognition by the parties

for more than fifteen years after negotiation of the last collective agreement furnishes convincing proof that their abrogation was never intended."

In the claim before us the practice of working these employes 7¼ hours had been in effect for over twenty-five years and the Carrier recognized this practice after the effective date, March 1, 1939, of the current agreement, for nearly seven years. In the record are bulletins runing back through 1942 attesting the fact that the Carrier recognized this practice. Under these circumstances, the Carrier is now barred from changing this practice at the places in question without the consent of the other party to the agreement. That practice having been in effect through the agreements of 1936 and 1939, as well as for many years before and since, is just as much a part of the agreement as though it were written therein.

In this claim as well as in the record of Award No. 2345, the Carrier sought without success to secure agreement of the following rule:

"This agreement shall supercede all agreements, practices and working conditions * * *."

Upon authority of Award No. 2345, this Division of the Board holds that the employes' claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as contended by the Petitioner.

AWARD

Claim (1, 2, and 3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1946.