Award No. 6469
Docket No. CL-6299

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY SCOTT M. LOFTIN AND JOHN W. MARTIN, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier's unilateral action, effective September 1, 1949, in denying employes in the Division Offices at New Smyrna Beach, including the offices of the Superintendent, Trainmaster, Chief Train Dispatcher, Roadmaster and employes in the New Smyrna Beach Agency (ticket and freight) rest periods of ten (10) minutes each in the morning and afternoon during the work day was in violation of the agreement rules, as hereinafter cited;

2. That the Carrier be required to restore these rest periods, and

3. That all employes adversely affected be compensated at the punitive rate of pay for twenty (20) minutes each work day subsequent to November 29, 1951, on which they are denied these rest periods.

EMPLOYES' STATEMENT OF FACTS: For more than twenty-three years prior to September 1, 1949, the employes in the offices mentioned in Statement of Claim were permitted to absent themselves under pay for periods of ten minutes in the morning and ten minutes in the afternoon, or a total of twenty minutes per day, within their normal service assignments for the purpose of taking "rest periods". Carrier does not dispute the fact that this practice did exist and that employes were allowed to leave their offices in order to obtain refreshments during these ten-minute rest periods each morning and afternoon.

Effective September 1, 1949, by oral instructions from officers of the Railway, this practice was discontinued.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date of January 1, 1938, and the following rules thereof read:

"RULE 38. Day's Work: (a) Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

of eight hours, exclusive of the meal period, on any day, or in excess of 40 straight time hours in any work week or for work on the sixth and seventh days of work weeks, the Employes are requesting the Board to establish for the claimants what would amount to a work week of 38⅓ hours consisting of five days of 7⅔ hours each, with overtime accruing after 7⅔ hours on any day or 38⅓ straight time hours in any work week. This the Board is not empowered by the Railway Labor Act, as amended, to do.

5. In summary, the applicable agreement contains no basis for favorable consideration of the claim. There is no provision of the agreement that requires the Railway to establish a working day of less than eight hours, or to pay overtime after seven hours and forty minutes of service a day or thirty-eight hours twenty minutes per week, or that nullifies Rules 38 or 45 and the Special Agreement of September 1, 1949 that provide for 40 hours' work for 48 hours' pay at the former rates and overtime after eight hours work per day or forty hours work per week, etc. The discontinuance of the courtesy made the subject of the claim coincident with revisions in certain agreement rules and adoption of new rules on September 1, 1949 by which the 5-day work week was established in lieu of the former 6-day work week with the same take-home pay, was proper and desirable. The Railway has always been entitled to eight hours work without "rest periods" under the assignments for the positions involved, the same as in all the other offices where the courtesy was not given, and allowance of the gratuity did not alter the controlling rules, or deprive the Railway of the right to enforce the rules and assignment bulletins. There would have been no foundation for a claim such as the present one under the rules existing prior to September 1, 1949, and the new and changed rules that became effective on that date established conditions about which there cannot be any misunderstanding.

For the reasons stated, all parts of the claim are without merit and should be denied.

All of the matters cited and relied upon by the Railway have been discussed with the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: Beginning about 1930, the incumbents of certain clerical positions in the Superintendent's Chief Train Dispatcher's, Roadmasters and Freight and Ticket Offices at New Smyrna Beach, were permitted to take a period not to exceed 10 minutes in the forenoon and afternoon to visit the restaurant. Beginning September 1, 1949, this rest period was canceled by order of the Carrier.

On January 1, 1938, the following rule was in effect:

> "Rule 38. Day's Work: (a) Except as otherwise provided in this article, eight (8) consecutive hours' work exclusive of the meal period, shall constitute a day's work."

Article 2, Sec. 3 (j) of the Chicago Agreement of March 19, 1949, provides that "existing rules which provide for the number of hours constituting a basic day shall remain unchanged", hence Rule 38 above was in effect when the so-called period was canceled.

It is the position of the employes that past practices modified the requirement of Rule 38. It is the position of the Carrier that Rule 38 is unambiguous in that it requires 40 hours' work per week and that the Carrier is at liberty to discontinue the courtesy at any time it elected to do so. The Carrier relies on Award 5166 where it was said:

> "Past practices under a rule on a specific subject that is clear and unambiguous does not change the rule itself and either Carrier

can enforce or employes can require Carrier to enforce it according to its terms. * * *"

To give effect to the rest periods would mean that an employe instead of working 40 hours per week, as required by the rule, would only work 38⅛ hours per week.

It clearly appears that Rule 38 is unambiguous. It requires 40 hours per week and is not changed or modified by past practice.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

The Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.