

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated and has continued to violate the Schedule Agreement effective September 1, 1949, when it refused to notify the regular employe, A. E. Ivey, and failed to allow Mr. Ivey to perform the work on his rest day January 29, 1955, which was an unassigned day.

(b) The Bureau through unilateral action allowed Mr. T. A. Steele, Agent, assigned to Position No. 31, and Mr. C. L. Francione, Jr., Inspector, Position No. 34, to perform five hours and four hours respectively for a total of nine hours at time and one-half.

(c) That Claimant A. E. Ivey, Import Inspector, on Position No. 193, rate \$15.38 per day, be compensated for nine hours at time and one-half covering the work on Saturday, January 29, 1955, attached to his regular assignment, but was performed by those listed in Item (b) above.

EMPLOYEES' STATEMENT OF FACTS: There is no dispute between the parties that all Bureau employes at El Paso, Texas, are on five-day assignments Monday through Friday with Saturdays and Sundays as days of rest.

Position 193 assigned to A. E. Ivey, the claimant at El Paso, Texas, is the only position at that point assigned to inspect import shipments; in fact, the Bureau's District Manager at Dallas, Texas, in his letter of February 25, 1953, had this to say in part regarding Position 193 at El Paso, Texas: "This is to advise that the position in question is that of an Import Inspector at El Paso which involves the inspection of freight for classification, loading, stowing and bracing, including livestock inspection."

employees in this Bureau held their annual meeting in Dallas, Texas during the year, 1955. At that meeting, District Chairman Nixon discussed the merits of this claim with some of the other District Chairmen and the information we have is that the District Chairmen who were conversant with this dispute agreed with the views expressed by District Chairman Nixon.

Gentlemen of your Honorable Board, just how far does an employee expect an employer to go when the employer undertakes to make every honest and sincere effort to be just and fair. Certainly to expect us to contact the Claimant under the conditions which he lives makes it next to impossible for us to comply with his wishes. He claims, of course, he is available, well if he is, why doesn't he make himself available to us in a manner similar to that followed by our other employees, but no, he, Mr. Ivey, for reasons of his own expects us to do the impossible in contacting him when work is necessary on an unassigned day. In other words, there is no doubt but what his thinking is that regardless of the circumstances, it is our obligation to notify him to report for work on one of his unassigned days no matter what difficulties we may encounter. In other words, in substance it is his opinion that the obligation is ours and we are confident that your Honorable Board will not sustain the views of the Claimant in a claim such as this because we would, under existing conditions, be everlastingly confronted with a situation which would make our position untenable.

Now if Mr. Ivey means what he says when he claims he is available, why doesn't he make himself available, but again we repeat that is something that he has not undertaken to do, therefore, we are confident that you will find this claim is without merit and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant seeks compensation for work of his position performed by other employees on his rest day. The Bureau had indicated its willingness to use Claimant on his rest day for the work. This dispute arose because the Bureau could not be sure before the rest day whether there would be such work to perform due to the uncertainty of arrival trains to be inspected.

Claimant lived in a trailer camp and his home did not have a phone. The camp's manager had a phone but would not accept the responsibility for receiving incoming phone calls.

The Bureau asked Claimant Ivey to telephone early on his rest day to find out whether the trains which would require his work had arrived. He was to be recompensed for the cost of telephoning. Claimant was willing to telephone only if he received three hours pay for a "call" for doing so. The Bureau would not agree to this arrangement.

A very similar situation was one of the issues in Docket No. CL-7764, Award 8026 (Lynch) involving the very same parties, including the Claimant.

We are bound by and agree with the holding there that Mr. Ivey could not claim compensation for days when he chose not to make himself reasonably available for communications with his employer.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1960.