

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of George R. Davis, Refrigerator Inspector, Burr Oak, Ill., yards, rate \$170.00 per month, for time and one-half for all time required to work outside of his regularly assigned hours of 7:00 A. M. to 7:00 P. M. from August 1st, 1937."

STATEMENT OF FACTS: On September 4th, 1936, Mr. George R. Davis, seniority date June 15th, 1920, asserted his seniority rights on position of Refrigerator Inspector at Burr Oak yards, rate of pay \$170.00 per month, then held by junior employe, Mr. A. Johnson, seniority date April 25, 1922, then working 7:00 A. M. to 7:00 P. M.

Through mutual agreement between Mr. Johnson and the other Refrigerator Inspector, who covered period 7:00 P. M. to 7:00 A. M. these men had been alternating from the day to the night shift over various periods, sometimes alternating each month and sometimes alternating each 15-day period.

The latter part of July 1937, Mr. Davis notified the party on the night job that he no longer desired to trade off with the night man—in other words, to alternate the shift. The carrier, however, insists that Mr. Davis must continue this practice and has instructed him to continue to trade off with the night man each thirty days.

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, and the following rules and provisions thereof read:

ICING AND REFRIGERATOR INSPECTORS.

"These rules will apply to the positions of Refrigerator and Icing Inspectors carried on the system payroll of Superintendent of Refrigerator Service with the following exceptions:

"(a) Icing and Refrigerator Inspectors carried on system payroll will be included on a system seniority district roster. Vacancies and new positions will be bulletined to all employes on the system seniority roster, and vacancies or new positions not filled from employes on this system seniority roster will be bulletined over the operating division seniority district where vacancy or new position is located. Division employe assigned such vacancy will retain his seniority on the division from which transferred and accumulate seniority in the new system district from date assigned by bulletin.

"Your Board very properly held in an almost identical situation in your Award No. 19 that Harvey LaFrantz was not entitled to overtime at Armourdale, Kans., and here there is presented even more convincing proof of the unmistakable knowledge had by the party making this claim as to exactly what his assignment would be when he accepted the position at Burr Oak, and had there been any justification for a complaint on his part from the standpoint of the contract governing his working conditions, etc., he should have voiced such complaint when he was advised of the conditions under which the Refrigerator Inspector at Burr Oak were to work before he accepted the position, and certainly he and the organization are inconsistent in asking for payment of time and one-half for a regular assignment.

"The inclusion of the positions of Icing and Refrigerator Inspectors as listed on page 41 of the present clerks' agreement of January 1, 1931, is predicated upon a supplemental Memorandum of Agreement, made through mediation, negotiated between the parties on December 5, 1930, governing wages and working conditions of Icing and Refrigerator Inspectors, which agreement, among other things, stipulated that:

'Present assigned rates of pay for present assigned number of hours per day and days per month will remain in effect unless changed by agreement between the management and employees' representatives. Overtime as per clerks' agreement will apply for time worked in excess of present assigned hours per day or present assigned days per month.'

"As of December 5, 1930, the two Icing and Refrigerator Inspectors at Burr Oak were, in fact, assigned to protect the service of twelve hours per day daily and to alternate each month on the day and night assignments. No changes in such assignments have been negotiated or agreement made between the parties that would change the established assignments and Mr. Davis has not worked beyond the twelve-hour assignment period that the position was to protect as covered in the Mediation Agreement of December 5, 1930. As Inspector Davis has not worked in excess of the agreed-upon hours of the Burr Oak assignment, his claim for punitive compensation cannot properly be sustained."

OPINION OF BOARD: Mr. George R. Davis, the complainant employee, exercised his seniority rights to position of Refrigerator Inspector at Burr Oak yards on September 4, 1936. At that time, through mutual agreement between the employee he displaced, Mr. A. Johnson, whose hours were then from 7:00 A. M. to 7:00 P. M., and the other Refrigerator Inspector, those two Inspectors were alternating from the day to the night shift over various periods, sometimes alternating each month and sometimes alternating each fifteen (15) days.

Mr. Davis continued this mutual agreement without complaint from September 4, 1936, until the latter part of July 1937, when he notified the party on the night job that he no longer desired to continue the arrangement or agreement to alternate as between the day and the night shift. On July 31, 1937, the General Chairman, representing Mr. Davis, discussed with Carrier's representative the desire of Mr. Davis to discontinue the arrangement herein mentioned and stated that thereafter he (Davis) wished to work the day shift. No action was taken by the Carrier to discontinue the arrangement and this claim was then filed on behalf of Mr. Davis to be effective as of August 1, 1937.

The Board rules that the arrangement or agreement between the two Refrigerator Inspectors herein related is contrary to the provisions of the agreement between the parties, and that the practice of the regularly assigned employees here involved, alternating on day and night shifts, should be discontinued. In view of all the facts and circumstances involved in this particular case, the Board feels that equity will be done to all interests involved by discontinuing the practice of which complaint is made, but disallowing claim for compensation.

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 employe involved in this dispute are respectively carrier and employe 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 practice of alternating employes, as described, occupying position of Refrigerator Inspector at Burr Oak, Illinois, is contrary to the agreement in evidence, and it shall be discontinued; Mr. Davis, now on the night shift, shall, on or before ten days from date of this award, be assigned to the position he asserted his seniority rights to, September 4, 1936, hours 7:00 A. M. to 7:00 P. M. if now occupied by an employe junior in seniority; and claim for compensation is disallowed.

AWARD

Claim sustained in accordance with the above opinion and finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1938.