Award No. 2161
Docket No. CL-2178

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

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

(1) That the Carrier violated the agreement revised as of February 1, 1926, when it assigned or required hourly rated freight platform employes at Salt Lake City to work regularly and failed and refused to pay such regularly worked employes a minimum of eight hours per day.

(2) That Harry Olson, Alvin Bridge, Jack Padley, Joseph Child, John Bell, Randolph Farris, C. F. Harland, Ross Jones, Jared Simister, William Salisbury, Fritz Olson, H. W. Holland, A. W. Hilton, Dell Birch, Bert Mendenhall, H. D. Hanson, Hyrum Pocock, Myrall Warburton, George Jones, James Lloyd, C. B. Olson, George Black, and Frank Thomas were and are entitled to and shall be paid a minimum of eight hours for each day worked between May 1, 1937 and April 25, 1941, and all other employes engaged in handling freight on that platform who have been worked and paid under similar conditions.

EMPLOYES' STATEMENT OF FACTS: The above stated claim originated in 1937 and in handling to Third Division, National Railroad Adjustment Board, Award No. 1211 was issued which provided, in part: "That items 1 and 2 be sustained; item 3 be sustained to the extent indicated in opinion and otherwise referred back to the parties for further negotiations and settlement, and, failing, same may be resubmitted." (Item 2 in this claim is similar to item 3 in claim covered by Award No. 1211)

Negotiations on the property were futile and the claim was again submitted to Third Division, National Railroad Adjustment Board and resulted in Award No. 1782, which award provided, in part: "That the controversy be referred to the parties."

Efforts to settle the controversy on the property again proved futile and the organization requested the management to join with them in joint check of payroll and joint submission of this dispute to Third Division, National Railroad Adjustment Board, which request was denied by the management.

OPINION OF BOARD: This is the third time this claim has come before the Board: first in Docket No. CL-1189 (Award No. 1211), second in Docket No. CL-1780 (Award No. 1782). The basic principle upon which it is now to be decided was laid down in Award No. 1211. That principle is: that employes who work "with substantial regularity" are entitled to the guarantee of an eight hour day as provided for in Rule 43 of the controlling agreement. For lack of evidence as to the extent of the work performed by claimants it could not be determined whether they had worked "with substantial regularity" or not. So the dispute was remanded for negotiation and settlement on the property. In remanding the dispute the Board laid down no rule of thumb by which "substantial regularity" was to be determined. In their negotiations, however, the parties supplied this omission by agreeing that employment for three days or more a week should be the standard by which "substantial regularity" should be determined.

The negotiations, nevertheless, broke down—largely due to the fact that an agreement, designed to obviate such disputes as this, was entered into by the parties effective April 25, 1941. While that agreement was not retroactive settlement of pre-existing claims was effected on the basis of it at all points on the Carrier's lines except Salt Lake City.

The claim came back to the Board in Docket No. CL-1780. Again there was an absence of evidence to determine who of the claimants had worked with "substantial regularity;" and the Award (No. 1782) was: "Controversy referred to the parties."

There is a sharp conflict between the parties as to the meaning and effect of this Award. While it may be that the Board was then of the opinion that the dispute ought to be settled on the basis of the agreement of April 25, 1941, we think it clear that it was not intended that the employes were under compulsion to renounce the rights established in Award No. 1211.

The carrier contends that Award No. 1782 was, in effect, a final disposition of the dispute. This position, as we understand it, is based on two theories, fiirst, that the Award contains no provision for resubmission and, second, to entertain the claim again is to permit claimants to try their case "piece meal." As to the first: we think the implication is inherent in the Award that, in case the parties failed to reach a settlement on the property, the claim could again be presented to the Board. As to the second: if the case may be said to have come up to the Board "piece meal" we think the fault is due more to a lack of co-operation on the part of the carrier than to laches on the part of the claimant.

The carrier also implies that the System Committee has acted inconsistently in settling claims at other points on the basis of the April 25, 1941 agreement while pressing the rights established by Award No. 1211. We find nothing in the record to indicate that the System Committee or the claimants did anything to lead the carrier to believe that they had or would renounce the rights established by that Award.

We conclude that the dispute is now properly before the Board for decision; and that the evidence is sufficient to make a final disposition of it. Exhibit "A" attached to claimant's ex parte submission contains a detailed statement showing the days worked by each claimant. It was established by Award No. 1211 that each claimant who worked "with substantial regularity" during the period covered by the claim should be paid a minimum of eight hours for each day worked. Negotiating the dispute on the property the parties agreed that three days' work or more per week constituted "substantial regularity." We adopt that standard in disposing of the claim.

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 where it appears from claimant's Exhibit "A" that any claimant worked on three or more days a week, during the period covered by the claim, such claimant shall be paid a minimum of eight hours for each of such days.

AWARD

Where it appears from claimant's Exhibit "A" that any claimant worked on three or more days a week, during the period covered by the claims, such claimant shall be paid a minimum of eight hours for each of such days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.