

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

LOCAL 358, UNITED CHEMICAL WORKERS—CIO

DELRAY CONNECTING RAILROAD COMPANY

STATEMENT OF CLAIM: The Union requests payment of eight (8) hours pay to Albert Kwoka and Peter Wojtas, members of Local 358, United Chemical Workers-CIO, for time lost during their regular shift as a result of being sent home after working eight (8) hours on an emergency call-in.

EMPLOYEES' STATEMENT OF FACTS: Albert Kwoka and Peter Wojtas were called in to work on an emergency on the night of February 11, 1948. Albert Kwoka and Peter Wojtas were then working on the day shift. Upon completion of the emergency work, which lasted eight (8) hours, Albert Kwoka and Peter Wojtas were refused permission to work their regular shift and were sent home.

POSITION OF EMPLOYEES: Article II, Section 2 (a) of the current Agreement states as follows:

"Each shift shall have a specified starting time."

Albert Kwoka and Peter Wojtas were scheduled to work the day shift.

It has been the past practice of the Company to permit employees to work their regular shift upon completion of the emergency work. Albert Kwoka and Peter Wojtas were desirous of working their regular shift.

It is the Union's position that the Company had no right to arbitrarily change Albert Kwoka's and Peter Wojtas' shift.

Article II, Section 3 of the Agreement reads as follows:

"Employees scheduled to work who report at regular starting time and are not held or used on that day shall be paid a minimum of four (4) hours."

Thus employees who, under normal circumstances, report to work and are not held or used receive four hours pay. In this case the employees are being penalized for a service rendered to the Company. It is therefore that the Union requests payment of eight (8) hours pay to Albert Kwoka and Peter Wojtas.

CARRIER'S STATEMENT OF FACTS: The facts, as Delray Connecting Railroad Company believes them to be, are as follows:

1. Albert J. Kwoka and Peter Wojtas on February 21, 1948 filed a grievance with the Carrier in the following form:

6. The agreement between the Union and the Carrier does not guarantee any particular number of hours or work per week and sound operating practice requires the adjustment of schedules in the manner in which the schedules of Kwoka and Wojtas were adjusted.

7. The Union points to no rule or provision in the agreement which has been violated by the Carrier in the adjustment made in the schedules of Kwoka and Wojtas February 11 and February 12, 1948. Nor does the Union point to any rule or provision in the agreement which was violated in the Carrier's method of computing pay for these employees during the period in question.

8. The claim should be denied.

OPINION OF BOARD: This claim rests on right of Carrier to use day shift employees for night service and then not use them the following day shift. In the absence of rules prohibiting such use the claim must be denied.

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 hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively carrier and employee 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

No violation has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of September, 1948.