

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

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

AMERICAN REFRIGERATOR TRANSIT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That the American Refrigerator Transit Company violated Rule 11, section (E-2) of the current Agreement when, on reasonable notice, it refused on December 3, 1948, and likewise continues to refuse to grant necessary leave of absence to employees' representatives for the purpose of investigation, consideration and adjustment of grievances; and

2. That said Company shall be directed by appropriate order and award to comply with the specific provisions of the aforementioned rule.

EMPLOYEES' STATEMENT OF FACTS: Immediately prior to and during the period December 3 through December 7, 1948, the American Refrigerator Transit Company maintained a force of employees at Kansas City, Missouri and Pueblo, Colorado, subject to the scope and operation of the Clerks' Agreement as listed herein:

AT KANSAS CITY, MISSOURI

Position	Occupant	Rate	Assigned Hours	Designated Rest Day
Lead Inspector	G. C. Kendall	\$10.30	7 AM-3 PM	Sunday
Office Diversion Clerk	L. E. Pierce	10.30	7 AM-4 PM	Monday
Inspector	A. R. Wynn	9.91	3 PM-11 PM	Tuesday
Inspector	J. E. Max	9.91	11 PM-7 AM	Wednesday
Inspector	L. E. Tibbs	9.91	11 PM-7 AM	Thursday
Inspector	D. R. Brooks	9.91	7 AM-3 PM	Saturday
Relief Inspector	J. H. Violet	10.30*		Friday
*Relief Inspector is paid a fixed rate for each day.				
Inspector	W. O. Osborne	9.91	7 AM-3 PM	Sunday
Inspector	W. A. Bennie	9.91	3 PM-11 PM	Monday
Inspector	J. R. Fox	9.91	3 PM-11 PM	Tuesday
Inspector	F. S. Haynie	9.91	3 PM-11 PM	Wednesday
Inspector	L. A. Bolander	9.91	11 PM-7 AM	Thursday
Inspector	D. Buckley	9.91	7 AM-3 PM	Saturday
Relief Inspector	H. Ravenscraft	10.30*		Friday
*Relief Inspector is paid a fixed rate for each day.				

The General Chairman's letter of February 1, 1949, Exhibit (F).

J. P. Finkenaur's letter of February 3, Exhibit (G).

General Chairman's letter of February 14, Exhibit (H).

J. P. Finkenaur's letter of February 16, Exhibit (I).

General Chairman's reply of February 26, 1949, Exhibit (J).

The Company believes your Honorable Board after considering the facts submitted, cannot but conclude that the claim of the Organization is extremely unreasonable, not adequately supported and beyond the intent of Section (E-2) of Rule 11 of the current Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute here, covered so fully in the record that it is not necessary to relate it in detail, arises out of the interpretation of Rule 11 of the Agreement, effective June 1, 1944. Rule 11, Section (e-2) reads:

"(e-2) Employees' representatives will on reasonable notice be granted necessary leave of absence for investigation, consideration, and adjustment of grievances and other organization matters involving the Company and its employees."

The complaint here grows out of the refusal by the Company to grant leave to three employees at different points of operation to participate in a conference on grievance matters with their General Chairman and Officials of the Company. The request for the conference and for participation of some of the employee representatives was made, in the first instance, by the General Chairman. A conference day was agreed upon. The employee representatives then made application for leave through the Company's Local Agents.

The refusal was not peremptory. The Assistant to the President, to whom the General Chairman had addressed his request, merely replied, "I am not familiar with the local conditions in the respective territories but feel certain that mutually satisfactory arrangements can be made." This was followed a few days later, however, as each of the three employee representatives made application locally for leave, by refusal in each case. The reasons given were, "Without incurring overtime, we will be unable to grant this absence at this time", and, "Account necessary to incur overtime during your absence, your request is denied". The reason given orally in the third case was the same. The amount of leave requested appears to have been one, two and three days, respectively, depending on travel requirements.

Nowhere in Rule 11, Section (e-2) do we find justification for such refusal. The Company cites Rule 11, Section (a) as warrant for their action. This part of the rule reads:

"The arbitrary refusal of a reasonable amount of leave of absence to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee is an improper practice and may be handled as unjust treatment under these rules."

The Company urges that the phrase "when they can be spared" in this part of the rule applies equally to Section (e-2). We do not believe this was the intent of the parties; on the contrary we believe section (e-2) was written for the specific purpose to which it refers, namely, to provide leaves of absence for employees' representatives to handle business in which both the employees and the Company are concerned. The only qualification stated in Rule 11, Section (e-2), is "on reasonable notice". We do not here undertake to interpret the words, "on reasonable notice", except to hold that we find nothing in the record before us to indicate that the requests

involved here did not meet that requirement. This is no evidence of abuse of the rule. Temporary inconvenience of the character indicated or payment for a few hours of overtime for replacements cannot be so construed.

This rule does not introduce a new or novel practice into the railroad industry; similar rules and the practice growing out of their application have been in existence for many years. It represents a form of cooperation that gives recognition and vitality to the mutuality of interest of the parties in their employer-employee relationships. Some significance may attach to the fact that this appears to be the first complaint of this character that has been submitted to this Division

We conclude that the Agreement was violated.

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 Employees involved in this dispute are respectively carrier and employees 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 was violated as contended by Petitioner.

AWARD

Claim (1) sustained. Claim (2) sustained and the Company is so ordered.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of December, 1949.