

Award No. 4605

Docket No. 4508

2-NYC-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Controlling Agreement, particularly Rules No. 2, 7, and 11, when on or about April 30, 1961, it unilaterally changed the starting and quitting time of regularly assigned Carmen at the Elkhart Passenger Station, Elkhart, Indiana.

2. That the Carrier be ordered to restore the starting and quitting time in effect prior to the unilateral change on or about April 30, 1961.

3. That the incumbent Carmen working at the passenger station be compensated at the rate of straight time for the one and one-half hours for the time that they were deprived of working their regular shift hours:

Second Shift	2:00 P.M. to 3:30 P.M.
Third Shift	10:00 P.M. to 11:30 P.M.

And at the rate of time and one-half for the time that they worked after the end of their regular shift, one and one-half hours

Second Shift	10:00 P.M. to 11:30 P.M.
Third Shift	6:00 A.M. to 7:30 A.M.

as follows.

R. E. Crout, April 30, 1961, second shift 5 days per week until the regular shift is restored.

S. W. Kidder, April 30, 1961 to May 21, 1961, third shift, five days per week.

R. L. Johnson, May 21, 1961, until the regular shift hours are restored, five days per week, third shift.

D. M. Howard, April 30, 1961 to July 5, 1961, second shift, two days per week.

D. M. Howard, April 30, 1961, to July 5, 1961, third shift, two days per week.

J. S. Porsoska, July 5, 1961, until the regular work shift hours are restored, second shift, two days per week.

J. S. Porsoska, July 5, 1961, until the regular work shift hours are restored, third shift, two days per week.

4. And that due to changes in assignment any other Carmen who may work any of these positions will be compensated as per the Claimants enumerated above, until the shifts are restored to their regular hours to coincide with those in the adjacent Freight Yards and Repair Track.

EMPLOYEES' STATEMENT OF FACTS: The New York Central Railroad Co., hereinafter referred to as the carrier employed in its Car Department at Elkhart, Indiana, 105 carmen and 8 carmen helpers who, prior to April 30, 1961, were assigned to three shifts, namely:

First Shift	6:00 A.M. to 2:00 P.M.
Second Shift	2:00 P.M. to 10:00 P.M.
Third Shift	10:00 P.M. to 6:00 A.M.

Carmen employed at the passenger station, freight yards and repair track are all on a common seniority roster and the above named shifts were established by bulletin and the employes assigned by bid for many years.

Prior to April 30, 1961, two shifts of carmen were employed at the passenger station as per the following:

Second Shift	2:00 P.M. to 10:00 P.M.
Third Shift	10:00 P.M. to 6:00 A.M.

Effective April 30, 1961, carrier unilaterally changed the starting and quitting time of the two shifts employed at the passenger station to:

3:30 P.M. to 11:30 P.M.
11:30 P.M. to 7:30 A.M.

thus establishing for its Elkhart Car Department a five shift operation as follows:

First Shift	6:00 A.M. to 2:00 P.M.
Second Shift	2:00 P.M. to 10:00 P.M.
Third Shift	10:00 P.M. to 6:00 A.M.
Fourth Shift	3:30 P.M. to 11:30 P.M.
Fifth Shift	11:30 P.M. to 7:30 A.M.

The carmen named in part 3 of the employe's claim are hereinafter referred to as the claimants, were removed from their regular assignments at the passenger station and assigned to the two new shifts created by carrier on April 30, 1961.

This dispute has been handled in accordance with the controlling agreement up to and including the highest designated officer of the carrier, with the result that satisfactory adjustment could not be obtained.

The agreement effective July 16, 1946 with revisions to July 1, 1951 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the claimants are employes subject to the terms of the controlling agreement, of which Rule 2, for ready reference reads:

“(a) There may be one, two or three shifts employed. The starting time of any shift shall be arranged by mutual understanding between the local officers and the employes' committee based on actual service requirements.

(b) The time and length of the lunch period shall be subject to mutual agreement.

(c) Where 2 shifts are employed, the spread of the second shift shall consist of 8 consecutive hours, including an allowance of 20 minutes for lunch within the limits of the fifth hour.

(d) Where 3 shifts are employed, the spread of each shift shall consist of 8 consecutive hours, including an allowance of 20 minutes for lunch within the limits of the fifth hour.”

Your attention is directed to the fact that the above rule clearly and unambiguously specifies that there may be one, two or three shifts of employes employed and that the starting time of these shifts shall be arranged between local officers and the employes committee.

There is nothing contained in Rule 2 or any other rule of agreement that authorizes the carrier to unilaterally establish a fourth and fifth shift. Neither is there any provision contained in Rule 2 or any other rule of the agreement providing that carrier's local officers and the local committee of the employes may jointly agree to the establishment of a fourth and fifth shift such as here established. It is self evident that the carrier violated the terms of Rule 2 of the agreement when they established a fourth shift (3:30 P.M. to 11:30 P.M.) and fifth shift (11:30 P.M. to 7:30 A.M.), damaging the employes working under its terms, therefore, they are entitled to be made whole as per part 3 of the employes claim.

The foregoing clearly shows that the carrier violated the agreement when they established a fourth and fifth shift of carmen at Elkhart, therefore, claimants are entitled to be paid at the time and one-half rate for all time they were required to work following the regular quitting hour of the second and third shifts which is 10:00 P.M. and 6:00 A.M. respectively, as per Rule 7, reading in pertinent part:

“(a) For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed.”

CONCLUSION: The carrier has established that there has been no violation of the applicable agreement, and that the claimants are not entitled to the compensation which they claim.

Therefore, the carrier respectfully submits that your honorable board should deny the claim of the employes.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On April 30, 1961, Daylight Saving Time began and for operating efficiency and service requirement carrier changed the starting times of the 2nd and 3rd shifts at its Elkhart, Indiana passenger station.

The employes allege that such action was in violation of the applicable agreement. They seek pro rata rate compensation for the 1½ hours each day that their shift was started "late" and additionally ask for pay at the time and one-half rate for 1½ hours for each day that they worked past the pre-April 30 quitting time.

The applicable portion of Rule No. 2 of the Agreement provides:

"There may be one, two or three shifts employed. The starting time of any shift shall be arranged by mutual understanding between the local officers and the employe's committee based on actual service requirements."

The record contains evidence to the effect that the carrier contacted the employes' committee concerning the changed service requirements and that an attempt was made to alter the shift starting times by mutual agreement. The employes refused to agree to any change.

The passenger station and freight yard are combined into one seniority district for the Carmen craft at Elkhart. There is a geographic separation between the two points but the exact distance is in dispute. It is not necessary that we resolve distances involved since it is agreed that there is a least approximately three miles between the points.

The carrier tells us that the two points are separate operations; the employes take a contra position and assert that previous to the filing of this dispute the carrier had taken the position that the passenger and freight yard were joint operations.

Affidavits dated October 11, 1963, are offered by the employes to support their position. The carrier objects to our giving consideration to the affidavits and points out that they are dated subsequent to the date that this claim was filed with this Board, i. e., March 25, 1963, and therefore violate Circular No. 1 of this Board and must be excluded. We must sustain the carrier's objection.

With no affirmative evidence before us to the contrary we must find that the passenger and freight yard at Elkhart were separate operations even though they were within one seniority district. Prior awards of this and other Divisions show that this is not an uncommon practice.

This Division, in Award No. 2798, interpreted a rule containing identical language as is now before us. Therein it was found that "the failure to achieve this end (a mutual understanding) does not carry with it the power of the organization to, in effect, veto any such (shift starting time) changes."

Prior Awards, when applied to this record, support our finding that the carrier has not violated the terms of the applicable Agreement by changing the starting times of the 2nd and 3rd shifts at its passenger station during the periods involved. In which case we believe that the claims presented should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.