

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13194
Docket No. 13095
98-2-95-2-125

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

- 1. That the Delaware and Hudson Railway, a Division of CP Rail System violated the terms of Rule 2 of the current agreement when they arbitrarily added an additional fourth shift at Saratoga, NY.**
- 2. That, accordingly, the Delaware and Hudson Railway Company be ordered to abolish the additional fourth shift and readvertise said positions within the terms and provisions of our agreement at Saratoga NY."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute arose at the Carrier's Saratoga, New York, facility because the Carrier abolished certain Carmen positions and then "arbitrarily" added a fourth shift by advertising two Carmen positions (SA-C-8A and SA-C-98) at the Saratoga facility. The Organization contends that the Carrier's actions violated Rule 2 of the parties' Agreement which provides in pertinent part:

- "2.15 When one (1) shift is employed, the normal starting time shall not be earlier than 6:00 a.m. nor later than 8:00 a.m.**
- 2.16 When two (2) shifts are employed, the second shift shall normally start immediately following the first shift.**
- 2.17 When three (3) shifts are employed, the third shift shall normally start immediately following the second shift.**
- 2.18 In establishing the starting time and quitting time for employees on the various shifts, the economy and efficiency of the service shall receive first consideration, and when starting any shift within the time limits specified in this rule would necessitate the use of an otherwise unnecessary additional shift or overtime on a regular basis, the normal starting time may be departed from. Should service requirements justify the changing of starting times a minimum of thirty-six (36) hours notice will be provided in writing to the affected employees and the Local Chairman."**

As best as we can ascertain, the Saratoga facility is a seven day, 24 hour, three shift operation. The two new positions were scheduled to work as follows:

SA-C-8A Tuesday 2000 to 0400 hours; relief three (3) days on second shift 1500 to 2300 hours and one (1) day first shift 0700 to 1500 hours. Position SA-C-9A Thursday and Friday, second shift, 1500 to 2300 hours and Saturday, Sunday and Monday 2000 to 0400 hours.

The evidence shows that the Organization was provided notice of the shift change pursuant to Rule 2. The Carrier argues, and it so advised the Organization, that service

requirements of economy and efficiency permit the Carrier to establish the two assignments.

The Organization on the property provided no evidence contradicting the Carrier's contention that service requirements necessitated the change of hours for these two positions. It is clear, however, that the parties met a number of times to discuss the issue and exchanged correspondence in an attempt to reach agreement.

Nonetheless, the statement of claim does not require monetary relief on behalf of an identifiable Claimant. What the claim does seek is an order from this Board to abolish the two positions and to advertise them pursuant to the Agreement provisions. The Board, as held on many occasions by this Division, does not have the authority to issue declaratory judgments or to issue injunctive relief (See, among many Second Division Awards 13008, 12597, and 11658).

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of February 1998.