

Award No. 1153

Docket No. 1087

2-BM-EW-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 18, RAILWAY EMPLOYEES'

**DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)
BOSTON AND MAINE RAILROAD**

DISPUTE: CLAIM OF EMPLOYEES: That the operation of the fourth shift of electrical workers in the engineering department is improper, and that the 8:00 A. M. to 12:00 Noon and 12:30 to 4:30 P. M. shift be dis-established.

JOINT STATEMENT OF FACTS: At the time this claim arose the electrical force in the engineering department, with assigned headquarters at Boston, Massachusetts, and with system seniority, consisted of twenty-two (22) men with regular assigned hours as follows:

1. Eighteen (18) men from 8 A. M. to 12 Noon—12:30 P. M. to 4:30 P. M.
2. One (1) man from 7 A. M. to 3 P. M.
3. Two (2) men from 3 P. M. to 11 P. M.
4. One (1) man from 11 P. M. to 7 A. M.

These eighteen (18) men on the 8 A. M. shift perform duties wherever assigned all over the system, whereas the duties of the remaining four (4) men regularly assigned on three consecutive shifts are confined to the maintenance of the North Station and yards at Boston.

The agreement dated effective April 1, 1937 is controlling.

POSITION OF EMPLOYEES: The employees herein involved are all on the same roster of the electrical department (engineering), are all headquartered at Boston, Massachusetts, and all of them perform electrical maintenance and construction work of all kinds, often in the North Station and/or yards.

As outlined in the joint statement of facts, this force of employees is assigned to cover four (4) separate and distinct shifts. The employees believe the situation herein is comparable to that involved in Award No. 1058, Docket No. 1015, wherein the Second Division definitely ruled against any interpretation, under a comparable rule, which would permit the establishment of more than three (3) shifts. It appeared to be the position of your Honorable Board, and the employees herein heartily subscribe thereto, for sundry reasons, some of which will be hereinafter set forth, that unilateral interpreta-

hours of the two electrical crews is an "agreement affecting working conditions". Certainly the committee, or its general chairman, was bound by law to negotiate with respect to any proposed change. It is unfortunate that the general chairman should disregard the clear and orderly procedure of the Act and burden the Second Division with a claim which is not only unwarranted but is absurd.

In conclusion, four things are clear:

- 1—The claim of the employes that there are four (4) shifts in the electrical crew is unfounded in fact, rule or reason.
- 2—The committee has not proceeded according to rule.
- 3—The committee has not taken the steps required by the Railway Labor Act.
- 4—There is no claim properly within the jurisdiction of the Second Division. See Second Division Awards 803 and 514.

Wherefore, the carrier urges that the facts do not justify an affirmative award.

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.

The parties to said dispute waived right of appearance at hearing thereon.

This dispute is submitted on a joint statement of facts. There are twenty-two men in the electrical force in the engineering department of the carrier. They are on the same seniority roster. Eighteen have hours from 8:00 A. M. to 12 Noon and 12:30 P. M. to 4:30 P. M.; one has hours 7:00 A. M. to 3:00 P. M.; two from 3:00 P. M. to 11:00 P. M.; and one from 11:00 P. M. to 7:00 A. M.

The employes claim that there is a violation of Rule 2, which provides for a maximum of but three shifts, and they ask that the shift from 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M. be disestablished.

The carrier claims that there is no violation because the eighteen-man crew performs work all over the system, whereas the work of the others is confined to the North Station area. The carrier's statement as to the assignment of the men is admitted by the joint statement.

A shift has been defined in Interpretation No. 4 to Supplement No. 13 to United States Railroad Administration General Order 27, Question 27 as follows: "A shift is a tour of duty constituting a day's work for one or more employes performing the same class of work, covered by Supplement No. 13, at the same station, who begin work and quit work at the same time . . ."

We call particular attention to the words, "at the same station" and the employes in their statement of their position inferentially admit that there is no violation of the rule unless there are more than three shifts at a single point. In spite of the fact that the outside men have in some instances performed work in the North Station area, we must look at the substance of this situation. Fundamentally there are here two crews, one performing work within a restricted area and the other over the entire system. We find no violation of the rule; for not more than three shifts were maintained at a single point.

The practice here involved has been in effect for many years without protest by the employees. It is true that repeated violations of a rule cannot establish rights under it. But a practice long continued without protest may indicate the parties' own interpretation of a rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1946.