

Award No. 1320

Docket No. 1240

2-B&M-FT-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Federated Trades)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. That effective April 6, 1948, the regularly assigned hours of the employees at East Somerville Enginehouse were changed in violation of the current agreement from beginning at 7 A. M. and ending at 3 P. M. to begin at 8 A. M. and end at 5 P. M., with a lunch period of one hour from 12 Noon to 1 P. M.

2. That accordingly the carrier be ordered to

(a) Reestablish the assignment of hours from 7 A. M. to 3 P. M.

(b) Additionally compensate each of the affected employees named below in the amount of 2 hours at the time and one-half rate for the services which they have each performed daily from 3 P. M. to 5 P. M., retroactive to the aforesaid date:

Machinists

G. Polcari
J. A. Gallis
S. P. Mason
C. W. Harlow
A. Puopolo
A. E. Mooney
M. Hart
D. Butchart

Electrician

O. K. Greenleaf

Boilermaker

J. J. Lynch

Sheet Metal Worker

Frank Sercl

Machinist Helpers

W. F. Mortell
A. J. Powers
F. Roberts
J. A. Mamatey
F. Knapp
H. J. Stanley

Boilermaker Helper

E. Delisle

Sheet Metal Worker Helper

W. Strout

Laborers

J. D. Coughlin
D. Tarzia
J. I. Merritt
J. A. Carbone, Jr.
N. Pendergast
V. Jarasitis
H. Veinot

J. J. Coughlin
N. Joyall
S. A. Brenos
C. A. Marrama
J. Ciskowski
M. J. Gillis
N. E. Davis

While Mr. Taylor carefully omitted to state that these two points were to be considered one point "for the purposes of Rule 25" it is obvious that the whole basis of the present claim is founded on this merging of rosters. Without such a merger there could be no excuse for claiming that the carrier could not change bulletin hours according to the requirements of the service. Certainly this is a claim "involving seniority rosters based on this consolidation of rosters". The progressing of this claim is a breach of faith and a violation of paragraph 3 of the very agreement on which the employees rely.

A similar claim involving the same parties and the same rules was denied by this Division in Award 1153, Docket 1087. The same principal was involved in Awards 876 and 917. In Award 1241 the Findings read—

"The carrier in this instance desired to change the number of shifts established at this roundhouse from three shifts to two shifts. Notice was given to the employees by posting the following bulletin * * *. The rearrangement of shifts as per this bulletin is not a violation of the agreement."

There can be no doubt that

1. The carrier could legally change the number of shifts at the East Somerville enginehouse from three shifts to one shift. (Award 1241.)
2. The carrier could legally fix the lunch period after the change to be one hour without pay provided the men, through their representatives, were given a reasonable opportunity to come to some mutual understanding. (Award 1272.)
3. The men were given such opportunity but refused to negotiate.
4. East Somerville enginehouse and New Terminal enginehouse are not one point for the purpose of fixing shifts. (Award 1153.)
5. The agreement of September 17, 1946, was for the sole purpose of protecting the rights of the men under Rule 25 and for no other purpose.
6. The employees are estopped by paragraph 3 of the agreement of September 17, 1946, from progressing this claim.
7. The carrier has done all that the rules require but the organization has unreasonably and stubbornly refused to negotiate.
8. No rule has been violated and an affirmative Award is not justified.

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.

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

The gist of controversy is that the carrier acted in violation of the rules in establishing a single shift at East Somerville enginehouse with different hours than the comparable day shift at the New Terminal enginehouse. The charge of "lap shift" made by claimants, rests on the premise that the two enginehouses involved constitute a single point for all purposes, and in particular, for the purposes of Rule 2, Starting Time. Such premise would seem unsupported by the record.

Prior to the agreement of September 17, 1946, the two enginehouses were separate points. All that was accomplished by such agreement was the con-

solidation of seniority rosters into one roster with seniority dates and positions as they appeared by an attachment to the agreement. The first sentence of said agreement reads, in part, as follows:

"It is agreed that effective August 17, 1946, for the purposes of Rule 25 * * *."

Rule 25, mentioned, concerns "seniority" and provides that the seniority of employes in each craft covered by the agreement of 1937 shall be confined to the point employed. It was to take care of a special problem, which arose after Rule 25 was negotiated and which necessitated handling of seniority in a manner in contravention thereof, that the agreement of September 17, 1946, came into being. To stretch it beyond its express intendment cannot be justified. This Division in Award No. 1153 has determined that the mere fact that employes concerned are on one seniority roster and under the general supervision of the same supervisor does not determine the question. And that is all that has been presented here in support of the contention for recognition of a single point.

Finding that, except for matters of seniority, the two enginehouses continue as separate points, we comment upon actions taken in changing the hours of work in the light of the pertinent rules.

Rule 2 recognizes the carrier's right to determine whether one, two, or three shifts are to be employed at a particular point. Claimants do not question carrier's action in this respect except in connection with the question hereinabove determined. The printed Interpretation of Rule 2 does not recognize the right argued by these claimants for a paid lunch period in a single shift operation. Rule 2 does assure opportunity to the employes' committee to confer with local officers in an effort to reach a mutual understanding in regard to starting time of any shift, based on actual service requirements, and the time and length of the lunch period. While tentative agreements were arrived at with the local committee in respect to starting time, such understandings were later cancelled by the controversy over the question of points and the effect of the agreement of September 17, 1946, upon the changes proposed.

The carrier's proposed changes in working periods were first presented to the local Federated Committee and other committee members representing the affected work point on March 16, 1948. A further joint meeting was held on March 30, 1948. The notice effecting a change in bulletined hours was posted April 3, effective April 6, 1948. This constitutes a reasonable opportunity to reach mutual understandings. In view of the nature of the claims asserted by the employes a longer period of negotiations would have served no purpose.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1949.