

Award No. 1629

Docket No. 1517

2-PULL-EW-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly declined to establish all shifts on the 8 consecutive hour basis including an allowance of 20 minutes for lunch.

2. That accordingly the carrier be ordered to additionally compensate each of the Electricians who worked the shifts from 7:00 A. M. to 3:30 P. M. and 8:30 A. M. to 5:00 P. M., in the amount of 40 minutes at the overtime rate for every day they worked these shifts.

EMPLOYEES' STATEMENT OF FACTS: The carrier has had regular shifts in the Pennsylvania Railroad coach yard at Pittsburgh ever since the effective date of our agreement, as follows:—

7:00 A. M.—3:30 P. M.
8:30 A. M.—5:00 P. M.
5:30 P. M.—1:30 A. M.
7:00 P. M.—3:00 A. M.
11:00 P. M.—7:00 A. M.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement when they set up regular shifts at 7:00 A. M. to 3:30 P. M. and 8:30 A. M. to 5:00 P. M. and deducted 30 minutes time per day for lunch period, when Rule 22 (c) provides:

“In yards where it is necessary to work regular shifts during all of the 24 hours of the day, three starting times may be established between the hours of 7:00 A. M. and 9:00 A. M. and additional starting times may be established at 4:00 P. M. and 12:00 Midnight. Each

the practice was within the purview of the contract, and the intention of the parties. Such practical construction of a contract should not be brushed aside by any tribunal. This tribunal may only determine the question of where the parties have placed themselves by their own agreement."

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 employees 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 were given due notice of hearing thereon.

The question involved in this dispute is whether or not Rule 22 (b) or Rule 22 (c), current agreement, applies to the situation existing at carrier's Pennsylvania Railroad Coach Yard at Pittsburgh. The provisions of the rule in question provide in substance that in yards where employes are required to work after 6:00 P. M., three starting times may be established between 7:00 A. M. and 9:00 A. M. and one additional starting time may be established at 3:00 P. M. or 11:00 P. M. Under this provision, the lunch period was subject to agreement except that the shift starting at 3:00 P. M. or 11:00 P. M. should consist of eight (8) consecutive hours including an allowance of 20 minutes for lunch within the limits of the fifth hour. Rule 22 (b). In yards where regular shifts are used during all the twenty-four hours of the day, three starting times may be established between 7:00 A. M. and 9:00 A. M. and additional starting times may be established at 4:00 P. M. and 12:00 midnight. Each shift established under this provision shall consist of eight (8) consecutive hours including 20 minutes for lunch within the fifth hour. Rule 22 (c).

This claim is made on the basis of the assignments existing prior to June 24, 1951. At that time there was one shift starting at 7:00 A. M. and one at 8:30 A. M. The starting times of these assignments were in accord with Rule 22 (b) and 22 (c). Three other shifts were started at 5:30 P. M., 7:00 P. M. and 11:00 P. M. The shift commencing at 11:00 P. M. was in accord with Rule 22 (b) and the other two were not. None of the three find any support in Rule 22 (c) in the manner in which they were established. The carrier contends that as the shifts as established do not cover the full twenty-four hours of the day, that Rule 22 (c) is not applicable. The organization contends that as it was the intent of Rule 22 (c) that it should apply to situations where three consecutive shifts were required that Rule 22 (c) is applicable. We agree that the position of the organization is the correct one. If two shifts are required in addition to those with starting times between 7:00 A. M. and 9:00 A. M., they must be established under Rule 22 (c) and their starting times must be 4:00 P. M. and 12:00 midnight. The fact that there may be a short time when a shift may not be working, due to the latitude given the carrier in fixing the starting times of first shifts, does not change the intent of the rule. The term "where it is necessary to work regular shifts during all of the 24 hours of the day" is synonymous with the three-shift day common to the industry. Consequently the shifts established prior to June 24, 1951, are controlled by Rule 22 (c). The organization's claim is valid except as it is limited by the provisions of Rule 52 fixing a 60-day cut off time for filing claims. We conclude that carrier was required to establish all shifts of electrical workers in the Pennsylvania Yards of the Pittsburgh district prior to June 24, 1951 on an eight (8) consecutive hour basis with an allowance of 20 minutes for lunch within the limits of the fifth hour, subject to the cut off time fixed by Rule 52. Any assignment established in accordance with the exception set out at the end of Rule 22 would not, of course, constitute a basis for claim.

AWARD

Claim sustained per opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 26th day of January, 1953.