Award No. 1838
Docket No. 1726
2-MP-F&O-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Firemen and Oilers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly rearranged the hours of Supplymen and Relief Supplymen changing their starting and quitting time and forcing them to take a one hour meal period since July 18, 1952 at Jefferson City, Missouri.

2. That accordingly the Carrier be ordered to restore the proper shift hours consisting of eight straight hours with an allowance of twenty minutes for the meal period without deduction in pay that was in effect prior to July 18, 1952 and compensate Supplymen and Relief Supplymen in the amount of one hour's pay each at the time and one-half rate for each day worked since July 18, 1952.

EMPLOYES' STATEMENT OF FACTS: Laborers (supplymen) Albert Forck, C. V. Wallace, Harry Schnauth, Louis J. Mertens (relief supplymen) E. Perkins, Carl Scrivner and E. J. Long were employed and assigned as follows:

"A. Forck and C. V. Wallace	7:00 A. M. to 3:00 P. M.	
H. Schnauth	3:00 P. M. to 11:00 P. M.	
L. J. Mertens	11:00 P. M. to 7:00 A. M.	
E. S. Perkins Carl Scrivner E. J. Long	Relief employes assigned to relieve the four supplymen on their rest days."	

The regular supplymen and the relief supplymen on the days they worked as supplymen were allowed twenty (20) minutes for lunch within their eight hour tour of duty without deduction in pay.

On July 12, 1952, the carrier posted a bulletin abolishing the assignments of the supplymen and relief supplymen and in the same bulletin, readvertised three regular supplymen's assignments and three relief assignments which relief assignments called for each relief assignment to relieve each of the regular supplymen on their rest days. The readvertised assignments provided for different starting and quitting times and required that the

That the use of this language was deliberate can be shown in two ways. Rule 2 (d) of the shop crafts' agreement provides that where three shifts are employed, "Each shift will work straight through and will be allowed not to exceed twenty minutes for lunch between the beginning of the fourth and ending of the sixth hours with pay." It is obvious that the shop crafts have obtained a positive rule which does not permit the carrier any freedom in establishing the work schedules of shop craft employes in continuous service on running repairs and train yard inspection. This language is as old as that in the agreement involved here and could have been followed if desired. The language in the rule involved in this claim originated in the April 1, 1928, agreement with the company union covering this class of employes. When the firemen and oilers obtained the right of representation in 1934 and the agreement was revised, an attempt was made to get this language changed and the following language was proposed.

> "(b) For regular operations requiring continuous hours, eight (8) consecutive hours without meal period will be assigned as constituting a day's work, in which case twenty (20) minutes shall be allowed in which to eat, without deduction in pay, when permissible the lunch period shall be between the fourth and sixth hour."

The foregoing proposal shows that the employes asked for rule which they are now trying to get by interpretation but they failed to get such a rule in 1934 and the carrier has been unwilling to give them such a rule. The reason can be found in the facts present in the case now before your Board. More freedom is required in order to achieve the operating efficiency necessary to fulfill the duty which the carrier owes to the public.

Rule 3 (c) has remained unchanged from 1928 until the present time and it means the same thing now as it did in 1928. The integrity of the agreement must be maintained in order to insure the rank and file members of those benefits obtained, however few or many they may be, against attack by any force. Changes and improvements in the agreement must come about through the orderly process of negotiation.

In the employes' letter of October 15, 1952, (carrier's Exhibit G) the statement is made that Rule 2 does not apply, yet the contention is made that the "Note" to part (b) of that rule was violated. The allegations are contradictory. Rule 2 does apply but the "Note" does not apply to this particular case. Jefferson City, where this claim arose, has always been a point where the requirements of the service have made the changing of starting times necessary and does not come under the restriction in the "Note". This is a matter of historical fact.

This claim is not supported by the rules and has no merit. It must be denied.

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 were given due notice of hearing thereon.

The situation out of which this dispute arose is as follows:

Prior to July 18, 1952 four of the claimants were regularly employed by the carrier at Jefferson City, Missouri, as supplymen in around-the-

clock service each having a continuous eight hour tour of duty with twenty minutes thereof for his meal period without any deduction in pay. Two of the claimants were assigned a tour of duty from 7:00 A. M. to 3:00 P. M., one from 3:00 P. M. to 11:00 P. M., and one from 11:00 P. M. to 7:00 A. M. The three other claimants, relief supplymen, were assigned to work these jobs on the rest days thereof, having the same hours of duty and working conditions as the regularly assigned employes when so assigned. Carrier, as of July 18, 1852, abolished these positions but at the same time reestablished all but one thereof. The reestablished positions consisted of one from 8:00 A. M. to 1:00 P. M. and from 2:00 P. M. to 5:00 P. M. with the hour from 1:00 P. M. to 2:00 P. M. off for the meal period; one from 4:00 P. M. to 9:00 P. M. and from 10:00 P. M. to 1:00 A. M. with the hour from 9:00 P. M. to 10:00 P. M. off for the meal period; and one from 12:01 A. M. to 5:00 A. M. and from 6:00 A. M. to 9:00 A. M. with the hour from 5:00 A. M. to 6:00 A. M. off for a meal period. Three relief positions, which had been abolished as of July 18, 1952, were also reestablished and the work on the rest days of the regular positions was assigned thereto. The occupants of the relief positions, when asigned to these rest days, had the same hours of duty and working conditions as the occupants of the regular positions.

The Firemen and Oilers of System Federation No. 2, whose agreement with the carrier includes supplymen, contend the carrier, in rearranging its forces as hereinbefore set forth, violated its agreement with them in two respects; first, by forcing these claimants to take a one-hour meal period and second, by changing their starting and quitting time without first consulting the local employes' committee and entering into an understanding with them in regard thereto. Based on these contentions the organization requests that the carrier be ordered to restore these claimants to their proper shift hours as they existed prior to July 18, 1952, which included an eight-hour tour of duty with an allowance of twenty minutes for a meal period without deduction in pay, and to compensate the claimants for one hour's pay at the time and one-half rate for each day they have worked under the rearrangement.

The first contention presents the question of carrier's right to change the meal period. In this respect the following rules of the parties' effective agreement are material.

Rule 2, Section 1—Hours of Service

"(a) Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work, except as hereinafter provided.

Rule 3

(a) Except as hereinafter provided, the meal period shall not be less than thirty (30) minutes nor more than one (1) hour.

(c) For regular operations requiring continuous hours, eight (8) consecutive hours without meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes shall be allowed in which to eat without deduction in pay when the nature of the work permits."

Rule 2, Section 1 (a) provides the eight consecutive hours constituting a day's work shall be exclusive of the meal period except when the parties' agreement authorizes otherwise. Rule 3 (a) provides for the length of time which the carrier may designate for the meal period. These two rules require carrier to provide a meal period of not less than thirty minutes nor more than one hour during any eight hour tour of duty for every employe covered thereby unless other provisions of the agreement authorize it to do otherwise.

When, as here, the operations require around-the-clock, or continuous service, Rule 3 (c) provides carrier "may", when the nature of work permits, assign eight consecutive hours of duty without a meal period provided not to exceed twenty minutes thereof shall be allowed an employe so assigned in which to eat and when so assigned no deduction in pay will be made for the time so used.

This is permissive authorization which the carrier may invoke when the nature of the work permits its use. It is in no sense mandatory and carrier, once having put it in effect, is not obligated to continue its use. It can change the arrangement at any time it sees fit to do so and provide the employes affected a meal period within the requirements of Rule 2, Section 1 (a) and Rule 3 (a).

As to the contention that carrier could not change the starting time of these positions without first consulting with and entering into an agreement with the local committee in regard thereto the following rule of the parties' effective agreement is material:

Rule 2, Section 1 (b)

> "There may be one, two or three shifts employed. The starting time of any shift shall be arranged by an understanding between the local officers and the employes' local committee, based on service requirements.
>
> Note: This rule is not to be construed to interfere with the present practice of starting men at different time at certain points where service requirement demands, but this practice will not be extended except to meet special service requirement that may arise and then only after a mutual agreement with Local Committee."

Jefferson City, Missouri, the place where the rearrangement took place, has always been a point where the requirements of the service have made the changing of starting times necessary in this class of employes, that is, it has always been a point where there existed a practice of starting employes at different times when the requirements of the service so demanded.

Rule 2, Section 1 (b), standing alone, would fully support the organization's contention. However, the "Note" thereto qualifies this requirement by preserving to the carrier the right to start men at different times at certain points where, at the time the agreement became effective, it had been the practice to do so when service requirements so demanded. Jefferson City was such a point.

In view of the foregoing we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1954.