

Award No. 3526
Docket No. 3395
2-C&NW-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)

CHICAGO & NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago & North Western Railway Company violated the provisions of the agreement beginning August 12, 1957 by causing the lapping of shifts.

2. That the Carrier be ordered to pay one hour for each day at time and one-half rate to each of the following Machinists and Helpers employed on the first and second shifts, beginning August 12, 1957 through December 26, 1957:

	MACHINISTS	HELPERS
1st shift	A. Bergendahl J. Case J. King P. Keefe M. Beecher	L. Temple L. Burkert F. Smith T. Hansen H. Grazella C. TenBore J. Zuidema
2nd shift	A. Engstrom J. Higgins A. Anderson C. Stuhlman C. Norskov C. Qualman	C. Westgate E. Sinkey C. Rusanoff E. Welch R. Utreska

EMPLOYEES' STATEMENT OF FACTS: The machinists and helpers named above, hereinafter referred to as the claimants, are employed by the Chicago & North Western Railway Company, hereinafter referred to as the carrier, in its car shop at Clinton, Iowa. There were two shifts working prior to the time of the violation, as follows:

"1st shift 7:00 A.M. to 12—12:30 P.M. to 3:30 P.M.

relates, the subsequent perishing of the person or thing, or cessation of the existence of the condition will excuse the performance, a condition to such effect being implied in spite of the fact that the promise may have been unqualified.' ”

It is obvious that since the parties to the agreement allowed for flexibility under the circumstances referred to in the second and third paragraphs of the rule, they had no intention of requiring a uniform commencing and quitting time for all the forces employed in such varied and separate operations as are found in the huge new freight car repair system in effect at Clinton. Such a condition, as pointed out above, was clearly not within the contemplation of the parties at the time they negotiated this rule.

The rule therefore does not apply and the claim is without merit.

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 pertinent rule provides that the time for commencing and quitting work shall be the same at the respective points in the Motive Power Departments.

Carrier contends that all the machinists working in the wheel shop at Clinton should not be considered as working at one point because of the size of the operation, the concentration there of work theretofore performed at separate points and the purpose and relationship of the wheel shop work with that of other departments.

Nothing is shown in the rule to indicate such intended limitation and we must construe it as it is.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1960.