

**Award No. 3602**

**Docket No. 3378**

**2-CofG-CM-'60**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**CENTRAL OF GEORGIA RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** 1. That the Carrier changed the hours of service of Coach Cleaners at Savannah, Georgia, effective April 5, 1958, from two shifts of eight (8) consecutive hours each, beginning at 7:00 A. M. to 3:00 P. M. and from 11:00 P. M. to 7:00 A. M.; to one shift beginning at 2:00 A. M. to 6:30 A. M. and from 7:00 A. M. to 10:30 A. M., with 30 minutes for lunch, in violation of the controlling agreement.

2. That accordingly the Carrier be ordered to restore the Coach Cleaner's hours at Savannah, Georgia to conform with the agreement, and

3. Additionally compensate Coach Cleaners Robert Edwards, Sr., Ernest Milton, Elbert Jenkins, Archie Harris, H. T. Robeson and any other coach cleaner, or coach cleaners, on the Savannah Coach Cleaners Seniority Roster who may be working in their place and/or who may be working such improper hours as were established effective April 5, 1958 by Savannah Shop Bulletin No. S-13-58, for three and one-half (3½) hours at straight time for each and every work day between the hours of 11:00 P. M. and 2:00 A. M., and between 6:30 A. M. and 7:00 A. M. account not being allowed to work these hours that would be in their regular assignment, and for the difference between straight time and time and one-half for all hours between 7:00 A. M. and 10:30 A. M. which they were required to work beyond what would have been their regular assignment, beginning on April 5, 1958 and continuing until this violation is corrected, had they not been improperly assigned to work from 2:00 A. M. to 10:30 A. M. in violation of the agreement.

**EMPLOYEES STATEMENT OF FACTS:** Prior to April 5, 1958, the Central of Georgia Railway Company, hereinafter referred to as the carrier, had three shifts of car inspectors working shifts beginning at 7:00 A. M., 3:00 P. M., and 11:00 P. M., with two shifts of coach cleaners beginning at 7:00 A. M. and 11:00 P. M., with no coach cleaner assignments on the second shift.

Effective April 4, 1958 all coach cleaner assignments at Savannah, Georgia were abolished; and effective April 5, 1958, one shift of coach cleaners was established with hours of 2:00 A. M. to 6:30 A. M. and 7:00 A. M. to 10:30 A. M., with 30 minutes for lunch.

**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 and 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.

Parties to said dispute waived right of appearance at hearing thereon.

The rules of the current agreement are concise regarding starting times of the shifts. Rule 2 reads in part that "when one shift is employed, the starting time shall not be earlier than 7:00 A. M. nor later than 8:00 A. M." This is the controlling rule along with 4 and 5 in the instant dispute since Rule 3, relied upon by the carrier relates to the establishment of a second shift.

Rule 132 states that "except as provided under the special rules of each craft, the general rules shall govern in all cases." Hence Rule 2 governs in this claim, since no contrary provision is made under Rule 125—Coach Cleaners, located in the Carmen's Special Rules.

Rule 125 states "Coach Cleaners to be included in this agreement and will receive overtime as provided herein." However, the mention of overtime does not exclude from the coach cleaners the benefits of the remainder of the general rules. This has not been the practice on the property nor is it indicated in the agreement.

The fact that the carrier attempted to negotiate a change in shift hours does not relieve the carrier of the necessity of abiding by the agreement provisions when such negotiations failed. The Board holds that the carrier erred in unilaterally changing the hours of service in violation of Rules 2, 4 and 5 of the controlling agreement.

Part 3 of the claim is sustained to the following extent. The claimants as expressed in the claim will be additionally compensated 3½ hours at pro rata rate for each day worked, April 5, 1958 to December 31, 1958 inclusive; 2 hours at pro rata rate, January 1, 1959 to June 22, 1959 inclusive; and 1 hour pro rata rate, June 23, 1959 to the date of correction.

This limitation is due to the fact that the claimants' shift was rebulletined on January 1, 1959, 12:30-9:30 A. M. and that the controlling three shifts of car inspectors and oilers were rebulletined on June 23, 1959 with third shift 12-8 A. M. The Board also holds that under the circumstances of this claim the penalty rate for depriving an employe of work is pro rata rate of the position even where time and one-half would otherwise be applicable.

#### AWARD

The claim is sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassman  
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1960.