

Award No. 3854

Docket No. 3622

2-WT-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the below seven listed Car Cleaners were improperly compensated for the below listed dates when they were changed from one shift to another;

M. M. Weathers.....	June 7, 1958
Blossom Johnson	June 7, 1958
W. R. Stokes.....	June 8, 1958
W. F. Ayers.....	June 9, 1958
Otto Hunter	June 9, 1958
C. Young	June 11, 1958
Floyd Johnson	June 18, 1958

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Car Cleaners in the amount of four hours pay at applicable rate of pay for the above listed dates.

EMPLOYEES STATEMENT OF FACTS: The above named car cleaners, hereinafter referred to as the claimants, are employed by the Washington Terminal Company at Washington, D. C. hereinafter referred to as the carrier. Claimants being assigned to the 3:00 P. M. to 11:00 P. M. shift at Union Station.

On June 6, 1958 there was a 63 employe force reduction of car cleaners resulting from the installation of a car washing machine that directly affected the claimants in that they were not left with enough seniority to remain on their regular 7:00 A. M. to 3:00 P. M. shift, thereby resulting in the claimants being required to change to the 3:00 P. M. to 11:00 P. M. shift in order to remain in service.

POSITION OF EMPLOYEES: The force was reduced at the direction of the carrier as the result of the automatic car washing machine replacing car

Third Division Award 4493—Referee Edward F. Carter:

" . . . The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Awards 2436, 1397, 1257. We are obliged to say, therefore, that the Carrier could not properly modify or abrogate the practice except by negotiation."

The carrier submits therefore that the claim of the employes is without merit and should 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.

Parties to said dispute were given due notice of hearing thereon.

This claim is identical with that involved in Award 3853 and necessitates the same conclusion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3854 and 3856

The majority is in error in stating that the claimants' request for a change of shift constitutes an exception to the exception stated in the rules for changes of shift at an employe's request. It will be noted that the majority did not quote the applicable rule, namely Rule 12, which states:

"Employes changed from one shift to another will be paid overtime rates for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employes involved."

and therefore apparently overlooked the key word "exchanged" in the exception. The claimants did not exchange shifts with other employes but were forced to displace junior employes on other shifts and should have been compensated at the overtime rate for the first shift of the change.

Edward W. Wiesner
C. E. Bagwell
T. E. Losey
E. J. McDermott
James B. Zink