

Award No. 4149
Docket No. 3878
2-MP-FO-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen & Oilers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 2, when on August 3, 1959, in the train yards at Kansas City, Missouri, they changed the force from three (3) shifts, which started at 7:00 A.M., 3:00 P.M., and 11:00 P.M. to a two (2) shift operation starting at 7:30 A.M. to 4:00 P.M. (30 minutes for lunch) and 7:30 P.M. to 4:00 A.M. (30 minutes for lunch) without first consulting the local employees committee and entering into an understanding with them in regard thereto.

2. That accordingly, the Missouri Pacific Railroad be ordered to:

A. Re-establish the assignments of starting time to 7:00 A.M., 3:00 P.M. and 11:00 P.M.

B. Additionally compensate the following employees who on August 4, 1959, were assigned to work from 7:30 A.M. to 4:00 P.M., who were assigned to work 7:00 A.M. to 3:00 P.M., prior to August 4, 1959:

First Shift — 7:30 A. M. to 4:00 P. M.

Clarence Henderson

H. Kirkendall

C. B. Turner

Ernest Fells

Geo. Wilburn

Steve Cummings

Dan Jamison

O. Chinn

Robert Stovall

in the amount of one (1) hour at the punitive rate for being required to work between the hours of 3:00 P. M. and 4:00 P. M. and not permitted to work the first shift as assigned to the train yard employes (7:00 A. M. to 3:00 P. M.).

- C. Additionally compensate all firemen and oilers listed below who were assigned 3:00 P. M. to 11:00 P. M. prior to August 4, 1959:

Second Shift — 7:30 P. M. to 4:00 A. M.

George Danner

Q. Quick

W. Lenoir

F. Gillum

and compensate them for all subsequent dates as long as the violation continues, who are now assigned from 7:30 P. M. to 4:00 A. M., in the amount of three and one-half (3½) hours at the straight time rate between the hours of 3:00 P. M. and 7:30 P. M., for being deprived of working their regular assigned shift. Also, additionally compensate these employes five (5) hours at punitive rate between the hours of 11:00 P. M. and 4:00 A. M. for August 4, 1959, and for each date thereafter as long as the violation continues.

- D. Additionally compensate all firemen and oilers listed above in Section 2(c), assigned from 7:30 P. M. to 4:00 A. M. whose regular assigned hours before August 4, 1959, was 11:00 P. M. to 7:00 A. M., in the amount of three and one-half (3½) hours at the time and one-half rate for being required to work other than their regular assignment. Also compensate them three and one-half (3½) hours at the time and one-half rate between the hours 7:30 P. M. to 11:00 P. M. and three (3) hours at the straight time rate between the hours of 4:00 A. M. and 7:00 A. M. for being deprived of being assigned to work their regular assignment for August 4, 1959, and all subsequent dates until the violation is corrected. These claimants covered in Section 2 (C) and (D) are the firemen and oilers affected who are now assigned 7:30 P. M. to 4:00 A. M. (See Employes' Exhibit A, Sheet 1) attached, which sets out the assignments of all the employes affected prior to August 4, 1959.

EMPLOYES' STATEMENT OF FACTS: Prior to August 4, 1959, the train yards at Kansas City, Mo., operated three consecutive eight (8) hour shifts of running repair and inspection forces, each shift beginning 7:00 A. M., 3:00 P. M., and 11:00 P. M. On Tuesday, July 28, 1959, the carrier posted Bulletin No. 25 abolishing assignments starting 7:00 A. M., 3:00 P. M., and 11:00 P. M. reading as follows:

"Effective quitting time Monday, August 3, 1959, following jobs abolished car department."

At the same time Bulletin No. 139, dated July 28, 1959, was posted re-establishing the above mentioned position to a two (2) shift operating assignment starting 7:30 A. M. and 7:30 P. M. This change in the starting and quitting time was affected by the carrier without mutual agreement or without consultation with the duly authorized local committee or their representatives for their concurrence in such change.

men on the first shift would have no validity even under the employees' theory since the men on the repair track simply have different starting times from the men in the train yard, which is clearly permitted under the agreement.

For the reasons stated, the claim is entirely lacking in merit and is not supported by the agreement and 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 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.

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

Section 1(a) of Rule 2 provides:

"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 employees' local committee, based on service requirements."

The claim is that the Carrier violated this provision on August 3, 1959, by changing the Kansas City train yard force from three shifts starting at 7:00 A. M., 3:00 P. M. and 11:00 P. M., to two shifts starting at 7:30 A. M. and 7:30 P. M., "without first consulting the local employees' committee and entering into an understanding with them in regard thereto." The running repair forces at Kansas City continued to operate on the former three shifts; and the claim as at first stated by the local chairman was that the Carrier had violated the rule by establishing five shifts.

The Carrier alleges that before the changes were made its local officers met on Monday, July 27, 1959, with the local representatives of all the employes concerned, including Local Chairman James Kelton, that no objection was made, and that bulletins were accordingly posted and the change was made, effective on August 4th, one week later; that no objection was made until September 21, eight weeks after the meeting, and then Mr. Kelton did not contend that the change was effected without consultation, but objected that the change established five shifts, which, if a valid objection, could not, of course, be cured by a local understanding; that the General Chairman's appeal of the claim to the Chief Mechanical Officer raised for the first time the objection of lack of such local understanding.

The record does not set forth the various denials and appeals, but does contain the original claim, which confirms the statement that in it Local Chairman Kelton complained of the establishment of five shifts, but not of the change of starting time without consultation or understanding. There is nothing in the record directly contrary to the Carrier's statements that at a meeting on July 27, which Local Chairman Kelton attended, the time changes were proposed, discussed and not objected to. However, the Employees rely

upon affidavits by Mr. Kelton and three committeemen which make these statements in general terms:

"The Firemen & Oilers Committee was not notified by Local Management here at Kansas City, Mo., before they made change from three shift operation to a two-shift operation on the Repair Track, August 21, 1959.

"We did not have any mutual understanding with the Missouri Pacific local supervisors prior to the above date about this matter."

The general statements that the "committee was not notified" and that "we did not have any material understanding" are in the nature of conclusions. Mr. Kelton and the three committeemen do not state that Mr. Kelton, the Local Chairman, was not at the meeting of July 27th, or that he was not informed. Perhaps we may presume that by "change from three shift operation to a two-shift operation" they meant "change in starting time of shifts," and that by "August 21, 1959," they meant "August 4, 1959." But we cannot amend the affidavits to that extent; for if, as so amended, they are not true, the affiants certainly cannot be blamed for untrue statements. For that reason the affidavits do not resolve the essential question of fact.

Consequently the present case does not resemble Award 2722, in which this Division found that the Carrier had completely ignored a roughly similar but somewhat stronger rule in making such a change.

The Division said:

"Under the rule neither the Carrier nor the organization may arbitrarily take a positive or negative, adamant or immovable position. Each should approach their joint problem in good faith and should make more than a token effort to reach understanding * * *.

"If after conference no agreement is reached, then and only then, may the management exercise its retained prerogative and assert its responsibility to function by initiating the changes required by actual service. * * *.

"In this docket no such effort was made by the carrier and the rule has been violated."

In the absence of valid proof that no such effort was made by the carrier the claim cannot be sustained, under Awards 1330, 2722 and 2798.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4149

We contend that the conclusions of the majority as expressed in its finding cannot be supported by the record submitted to the Division in this dispute.

We submit that a complete examination of that record will show that the majority has ignored documented evidence and elected to accept unsupported statements of facts as a basis of making a denial award. This award is in error.

R. E. Stenzinger

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink