

Award No. 4213

Docket No. 4071

2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Rule 14 of the current agreement when they assigned King Street Passenger Station Carmen M. P. Winston, G. E. Smilanich, T. L. Smith and Coach Cleaners C. Proctor, J. England and Y. Inouya third shift hours of 11:45 P.M. to 7:45 A.M.

2. That the Carrier be required to pay the Claimants $\frac{3}{4}$ hour at the straight time rate for time not allowed to work from 11 P.M. to 11:45 P.M.; and $\frac{3}{4}$ hour at the rate of time and one half for working overtime from 7 A.M. to 7:45 A.M. from the date claimants were assigned to this shift which became effective on May 23, 1960 and for as long as this shift remained in effect.

EMPLOYEES' STATEMENT OF FACTS: On the date of May 23, 1960 Carmen Melvin Winston and Teddy L. Smith, and Coach Cleaners Cleo Proctor and Jack England, hereinafter referred to as the claimants, were assigned to duty on the third shift with hours of duty ranging from 11:45 P.M. to 7:45 A.M. at the King Street Passenger Station, Great Northern Ry. Co., hereinafter referred to as the carrier.

On the date of May 25, 1960 Carman Gabriel Smilanich and Coach Cleaner Yutaka Inouye, hereinafter referred to as the claimants, were assigned to duty on the third shift with hours of duty ranging from 11:45 P.M. to 7:45 A.M.

The three shift operation put into effect on May 23, 1960 had the assigned hours of; first shift, 7 A.M. to 3 P.M.; second shift 3 P.M. to 11 P.M.; and third shift from 11:45 P.M. to 7:45 A.M.

The established custom and practice in conjunction with the interpretation of the three shift rule has always been that in a three shift operation, the shifts will run consecutively with no lapping or gapping.

guage contained in the standard starting time rules which appear in the old national agreement and most other carriers' agreements. This Board has consistently rejected attempts by the organization to rewrite rules through interpretation. In Award No. 3087, *Carmen v. N.Y.C.&St.L.*, Referee Thomas A. Burke, the Board said:

"* * * It must be borne in mind that the controlling agreement here is not a so-called standard agreement. This agreement does not contain a rule which is in most agreements requiring that the starting and quitting time for all men on each shift be the same.

Under the controlling agreement here we find that this transfer was a change of assignment and not a change of shift. This Board can do nothing but interpret the agreement. We cannot write a rule. Therefore, the claim must be denied."

The same principle was stated by the Fourth Division in Award No. 1487, *Rwy. Employees' Dept. v. F.G.E.*, Referee Harold M. Weston, as follows:

"It is certainly not our province to rewrite the Agreement or to subject to strained and artificial interpretations in order to reach a desired result, no matter how tempting it may be to do so in a particular case. The rules now under consideration, unlike many other collective bargaining agreements, fail to cover the point in issue and, inasmuch as the burden of proof in this case rests with Petitioner the claim must be denied."

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. Rule 14 of the schedule agreement clearly allows a one-hour leeway in the starting time for each shift without regard to the starting time of other shifts.

2. The word "continuous" in the last sentence of Rule 14 is merely a non-essential descriptive adjective which does not destroy the plain language of the first sentence.

3. The organization is requesting this Board to rewrite Rule 14 by interpretation to conform to the language of the standard starting time rules from the old national agreement which have been adopted by most railroads—but are significantly different from the language of Rule 14.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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.

On May 23, 1960, a three shift operation was put into effect at the King Street Station with the following assigned hours: first shift, 7 A. M. to 3 P. M., second shift 3 P. M. to 11 P. M. and third shift from 11:45 P. M. to 7:45 A. M.

It is the contention of the Organization that by establishing a gap following the second shift, and a lap of the third shift over the first shift, there has been a violation of Rule 14 of the controlling agreement. The Organization contends that Rule 14 contemplates a continuous uninterrupted operation where three shifts are operating.

Rule 14 of the controlling agreement reads as follows:

"RULE 14. STARTING TIME THREE SHIFTS.

Where three shifts are employed, the starting time of the first shift shall be not earlier than seven (7) A. M. nor later than eight (8) A. M.; the second shift not earlier than three (3) P. M. nor later than four (4) P. M.; and the third shift not earlier than eleven (11) P. M. nor later than twelve (12) midnight. Each shift shall consist of eight (8) consecutive hours including twenty (20) minutes for lunch during the fifth or sixth hour after going on duty with no reduction in pay. It is agreed that three eight hour shifts may be established under the provisions of this rule for the employees necessary to the continuous operation of power houses, millwright gangs, heat treating plants, train yard, running repair and inspection forces without extending the provisions of this rule to the balance of the shop force."

Carrier maintains that since the work requirements of the third shift at the King Street Station have changed during the 11:00 P. M. to 11:45 P. M. period, it is entitled to start the third shift at 11:45, even though the second shift is finished at 11:00 P. M., and the Carrier points to Rule 14 as authority to start each shift at any time between the hour's leeway contained therein.

Carrier points to Rule 4 of the National Agreement of 1919, and shows that it required the second and third shifts to follow without a break according to the starting time of the first shift. It cites the incorporation of this into most shop craft agreements on other railroads, and maintains that the failure of the negotiators of the instant agreement to follow substantially the language of Rule 4 of the National Agreement shows an intent to avoid the result of that agreement, and permits the Carrier a one hour leeway for the start of each shift.

The Organization cites past practice on this property as authority for their interpretation of Rule 14.

Carrier cites Rule 13 governing the starting time of a two shift operation as supporting its position. It must be observed however, that while Rule 13 permits a gap of a possible six or seven hours, it specifically prohibits a lapping of the two shifts by the following language:

"* * * The starting time of the second shift shall be in accordance with the requirements of the service, but not earlier than the close of the second shift nor later than ten (10) P. M. * * *" (Emphasis ours)

A careful reading of Rule 14, and of the record herein leads us to the conclusion that Rule 14 contemplates a continuous operation where the second

shift follows the first, and the third follows the second, with no gap and consequently no lap. The one hour leeway is spelled out, in our opinion, for the purpose of accommodating the second and third shifts to the starting time of the first shift.

AWARD

Claim sustained. Remanded to the parties for adjustment in accordance with the award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.