

Award No. 4443
Docket No. 4404
2-B&O-SM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier arbitrarily changed the starting and quitting time of the Sheet Metal Workers in the Water Station Department on the Cumberland Division, on October 2, 1961.
2. That the assignment of hours from 7:00 A.M. to 3:30 P.M. be reestablished.
3. That accordingly Carrier be ordered to additionally compensate Sheet Metal Workers R. J. Helmstetter, E. W. Conn, P. E. Adams, M. S. Leese, R. E. Boore, E. C. Dillion, J. S. Gary, V. J. Ross, J. B. Hamilton, Jr., P. H. Lueck, G. G. Buskey, Helper J. B. Hamilton, Sr., and Apprentice P. S. Troutman each in the amount of thirty (30) minutes at the overtime rate for each work day, retroactive to October 2, 1961, until date of correction of violation.

EMPLOYEES' STATEMENT OF FACTS: On September 21, 1961, the carrier posted notice and issued instructions effective October 2, 1961, all M. of W. Forces working hours would be 7:30 A.M. to 11:30 A.M. - 12 Noon to 4:00 P.M.

On October 4, 1961, Sheet Metal Workers' Local Chairman Francis J. Crabtree wrote Division Engineer, Mr. J. H. Rymer, and protested the changing of these working hours.

On October 20, 1961, Division Engineer Rymer replied to Mr. Crabtree's letter of October 4, 1961, admitting that there was an objection from the employes regarding the change from their regularly established starting and quitting time, which had been in effect for many years. He did not give any good or sound reason for changing the starting and quitting time.

A meeting was held on September 19th, 1961, as outlined in memorandum dated October 18, 1961.

System Federation No. 30, Railway Employees' Department,
A.F. of L. — C.I.O. (Sheet Metal Workers)

Baltimore & Ohio Railroad Company

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier arbitrarily changed the starting and quitting time of the Sheet Metal Workers in the Water Station Department on the Cumberland Division, on November 1, 1957.
2. That the assignment of hours from 7 A. M. to 3:30 P. M. be re-established.
3. That accordingly Carrier be ordered to additionally compensate Sheet Metal Workers H. P. Northcraft, R. J. Helmstetter, P. H. Lueck, G. G. Buskey, J. H. Hamilton, Jr., P. E. Adams, E. W. Conn and J. S. Gary, Sheet Metal Worker Apprentice E. C. Dillion and Sheet Metal Worker Helper J. B. Hamilton, Sr. each in the amount of 30 minutes at the overtime rate for each work day retro-active to November 1, 1957 until date of correction of violation.

FINDINGS: The Second Division of the Adjustment Board, based 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.

The carrier changed the shift starting and quitting time of the sheet metal workers in the Water Station Department on the Cumberland Division on November 1, 1957 and subsequently, on April 28, 1958 restored the original assignment hours.

The organization charged that rule 2 and the interpretation to rule 2 of the controlling agreement were violated. It is the opinion of the Board that the interpretation to rule 2 established the procedure where departures from (exceptions to) the established starting times are involved. Exceptions must be mutually arranged between the Management and the General Committee. If they fail to agree, status quo will prevail, i.e. 'all employes on a shift will start and quit at the same time.'

However, rule 2 provides that 'the starting time of any shift shall be arranged by mutual understanding between the local officers and the employes' committee based on actual service requirements.' Conformity to this rule requires a sincere attempt to arrive at an understanding; after which the carrier may proceed with the change

if it is prepared to show that the organization refused to be guided toward an understanding based upon service requirements.

Here no attempt was made to arrive at an understanding. On the contrary, the Carrier made its decision, posted the bulletins and only discussed the issue when the local committee protested the change two days prior to the effective date. The fact that only a half hour was involved and that the change might have been justified is not material to the issue. The employees were deprived of their voice in the matter.

It will be noted that the half hour claimed completes the minimum provided in the first paragraph of rule 4. This claim is sustained for 30 minutes at time and one half during the period November 1, 1957 to date of correction, April 28, 1958.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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

The Record In The Instant Case Shows Full And Complete Compliance On The Part Of The Carrier With The Holdings Of This Division In Its Award No. 3607:

The holding in Award No. 3607 stated in pertinent part that:

"* * * rule 2 provides that 'the starting time of any shift shall be arranged by mutual understanding between the local officers and the employees' committee based on actual service requirements.' Conformity to this rule requires a sincere attempt to arrive at an understanding; after which the carrier may proceed with the change if it is prepared to show that the organization refused to be guided toward an understanding based upon service requirements."

In the factual record in Award No. 3607 the Board found that "* * * no attempt was made to arrive at an understanding. On the contrary, the Carrier made its decision, posted the bulletins and only discussed the issue when the local committee protested the change two days prior to the effective date * * * the employees were deprived of their voice in the matter. * * *."

No such proposition is involved in the instant case. As the carrier has pointed out, on September 19, 1961, a conference was held in the office of Division Engineer Cummings for the purpose of discussing a proposed change in the working hours of the water station gang and motor car repairmen. At that time the committee was represented by Messrs. F. J. Crabtree, R. J. Helmstetter and W. F. Cage representing the sheet metal workers, water station gang and machinists, respectively. At that time the division engineer explained that it was desired to change the point starting time from 6 A.M. EST to 6:30 A.M. EST and then to adjust the time on October 29 to conform to the change from DST to ST. He explained that during the winter

months it was not possible to continue starting time at 6 A.M. due to the lack of daylight and the inability of those employes to perform their outside duties in a safe and efficient manner. In addition, he explained, that a large portion of the work performed by those employes was done in conjunction with the maintenance of way crafts. For example, the motor car repairmen are required to service and maintain track equipment and water station work is closely connected with B&B work. During the winter months those latter employes have their starting time changed to 7:30 A.M. The track and B&B forces cannot commence work until daylight.

Despite all these perfectly valid reasons the committeemen still objected to any change. Their only objections were vague personal reasons that had nothing to do with the demands of the service. Nevertheless, the division engineer was unable to secure their concurrence.

"* * * a sincere attempt (had been made) to arrive at an understanding * * *"; the division engineer concluded it was nonetheless mandatory to place the new starting time into effect as outlined. The work time was changed effective October 2, 1961.

In this case the carrier made every attempt to arrive at an understanding. No change was made in the starting time for these employes until after the conference held on September 19, 1961.

It is a fair conclusion that in this case "* * * the organization refused to be guided toward an understanding based upon service requirements. * * *." Certainly no contention can be made in the instant case that any "* * * employes were deprived of their voice in the matter. * * *."

It is likewise fairly obvious that the suggestion by the secretary-treasurer of System Federation 30 that "* * * we are agreeable to changing the starting time to 7 A.M. * * * as has been done with other employes in the Cumberland area who are represented by System Federation No. 30 * * * was totally and completely unsatisfactory for the detailed reasons given by the carrier's assistant chief engineer-maintenance in his letter of reply of December 14, 1961.

The carrier submits that in a word there has been full and complete compliance with the holdings of this Division in its Award 3607 in the instant case.

The Committee Is Attempting To Exercise An Absolute Veto Power Over The Carrier's Decision In Cases Of This Kind:

It is evident beyond question that what the organization seeks in this case is an absolute veto power over the carrier's decision in cases of this kind. It is the position of the carrier that this organization has no such absolute veto power over the Carrier's final decision as to the change in starting time.

For example, in this Division's Award No. 3607, it was carefully pointed out that: "* * * conformity to this rule (Rule 2) requires a sincere attempt to arrive at an understanding, after which the carrier may proceed with the change if it is prepared to show that the organization refused to be guided toward an understanding based upon service requirements. * * *."

Here alone is evidence that failure to achieve mutual understanding did not and does not now carry with it the power of the organization to veto the change.

Again, for example, in this Division's Award 2798 (System Federation 18 (Carmen) v. B&M) (Referee Smith), the holdings read in pertinent part as follows:

"* * * On the basis of the record here we conclude that the above quoted rule was not violated. The organization was consulted, and presented with ample opportunity to present evidence of lack of need for the proposed change. No such evidence was forthcoming. The rule, as written, contemplates any change in starting times will be predicated on the requirements of the service. While the rule assures that the parties will exert their best effort to arrive at a mutual understanding, the failure to achieve this end does not carry with it the power of the organization to, in effect, veto any such changes.

We conclude that the changes were made to meet the exigencies of the service, were not arbitrarily made, or in bad faith and thus not in contravention of Rule 2. * * *."

In a word, the carrier submits that this organization had no veto power as such over the carrier's final decision as to a change in starting time.

In summary, the carrier submits that this claim in its entirety at both Parts 1, 2 and 3, is totally without merit. The carrier respectfully requests that this Division so hold, and that the claim in its entirety be declined.

Oral hearing is requested.

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 October 2, 1961, the Carrier, after conferring with the Local Committee and posting notices, changed the hours of the Claimants at the Water Station Department, Cumberland, Maryland, from 7:00 A.M. to 3:30 P.M. to 7:30 A.M. to 11:30 — Noon to 4:00 P.M.

The Organization claims that the Carrier's action violated Rule 2 of the controlling Agreement which reads, in part, as follows:

"Any departure from the established starting time at any point will be subject to mutual agreement between the Management and the General Committee; otherwise, all employes on a shift will be required to go to work and quit at the same time."

The Carrier, on the other hand, in support of its position, cites the following portion of Rule 2 (a):

"The starting time of any shift shall be arranged by mutual understanding between the local officers and the employees' committee based on actual service requirements."

From the facts set forth in the record and the application of both sections of the rule cited above, it is abundantly clear that the change initiated by the Carrier was a "starting time" change and not a "departure from the established starting time."

On September 19, 1961, Division Engineer E. M. Cummings met with Local Committeemen F. L. Crabtree (Sheet Metal Workers), J. Helmstetter (Water Section Gang), and W. F. Cage (Machinists) to discuss a "starting time" change. Although the proposed "starting time" change was to be of very short duration, the Organization would not agree to it.

The record indicates that the Organization's objections were of a frivolous nature, while the reasons advanced by the Carrier were valid and compelling.

In keeping with the facts set forth above, the Board must hold that the Carrier did not violate the Agreement and, accordingly, the Organization's claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.