

Award No. 4535

Docket No. 4498

2-EL-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

ERIE-LACKAWANNA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinist Edward F. Gilroy was unjustly dealt with, when the Erie-Lackawanna Railroad Company unjustly changed the regular bulletined hours from an 8 hour day, to an 11 hour day.

2. That accordingly, the Carrier be ordered to return this position, back to its' regular bulletined hours, and to reimburse Machinist Edward F. Gilroy, 2½ hours overtime rate for all hours worked from first date of claim, also for Machinist William Devine, when he covered vacation period of Machinist Gilroy.

EMPLOYEES' STATEMENT OF FACTS: Machinists Edward F. Gilroy and William Devine, herein-after referred to as the claimants, regularly employed as machinists by the Erie-Lackawanna Railroad Company, herein-after referred to as the carrier, at the Kingston, Pa., round house. Machinist Gilroy is the only machinist on duty, (Machinist Devine covered vacation period). This position was last advertised, May 27, 1959, as a machinist position — hours — 6:00 A. M. to 2:00 P. M. Machinist Gilroy bid in this position, May 27, 1959 and was awarded same, June 2, 1959, and had covered this position until February 14, 1962, when he was called into a meeting with GYM Decker and Master Mechanic Robinson, who stated that the hours would have to be changed, at this time, no agreement could be reached, so Machinist Gilroy was informed, that starting February 19, 1962, the hours would be, 6:30 A. M. to 9:30 A. M. and from 12:30 P. M. to 5:30 P. M. The dispute was handled with carrier officials designated to handle such disputes, who all declined to adjust the matter.

"It is a fundamental principle of the employer-employee relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakeable language."

To the same effect, the Third Division held in Awards 8218, 6877 and 5331 as follows:

Award 8218 (Johnson) stated:

"It is axiomatic that the Carrier has all management prerogatives not relinquished by Rules Agreements. Thus, if it finds that a position such as Claimant's is required on regular work days, but not on holidays and Sundays, it may establish such position unless prohibited therefrom by specific provision or necessary implication of the Agreement. If not, it could get the necessary work done only by incurring wholly unnecessary expense and waste of time. No provision of the Agreement has been cited or found so requiring."

In Award 6877 (Carter) the Board said:

"It is the function of management to make all such decisions except as it may have limited itself by agreement."

In Award 5331 (Robertson) it was held:

"Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy. There is no rule in the applicable Agreement which requires that work once assigned on an overtime basis may not be assigned at straight time rates. Where the Carrier can get the work done at straight time rates without violating a provision of the Agreement it is within its province to do so. * * *."

See also Third Division Awards 9259 (Weston); 6946, 6856 (Carter); 6944, 6943, 6839 (Messmore); 6917 (Coffey); 6711 (Donaldson); 6655 (Wyckoff); 6610 (Bakke) and 6602 (Sharpe).

CONCLUSION:

Based upon the reasons, facts and authorities contained in this record, carrier submits that this claim, which is limited to the two (2) named claimants, 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 waived right of appearance at hearing thereon.

The Division must determine whether Rule 1 of the cognizant Agreement reading in part: "Eight hours shall constitute a day's work" prohibits the Carrier from changing a bulletined assignment for the claimant from one where the hours were 6:00 A. M. to 2:00 P. M. to one where the hours become 6:30 A. M. to 9:30 A. M. and from 12:30 P. M. to 5:30 P. M.

The Division finds that the express language of the Agreement in Rule 1 does not deny or prevent the Carrier from properly instituting a split shift. The Division is unable to construe the contract language in issue to read as though it said "Eight **consecutive** hours shall constitute a day's work".

The Division believes that, in as fundamental a matter as Hours of Service, the determination of the rights, privileges and limitations of the parties affected thereby, must be derived from, and confined to, the express contract language, absent any patent ambiguity, and should not be extended or limited by the construction thereof.

Nor is the Division inclined to modify its findings as a result of the Petitioner's citation of Rule 107. The Division can only conclude that the aforementioned Rule merely prohibits the Carrier from requiring an eight hour tour of duty to be operated in excess of an eleven hour span.

In summary, the Division finds that the claim cannot be sustained because it seeks to achieve a fundamental change in the express language of the relevant agreement by means other than negotiations between the parties.

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 June, 1964.