

Award No. 4599
Docket No. 4435
2-MP-CM-'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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the controlling agreement was violated by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier on April 14, 1962, Kansas City, Missouri, when they improperly changed the assigned hours of twenty-two (22) employees by failure to abolish the jobs they did not wish to work and repost these jobs, and they thereby deprived these employees of their seniority rights.

2. That accordingly, the Carrier be ordered to compensate the following employees, hereinafter referred to as the Claimants, who were regularly assigned by bulletin from 7 A.M. to 3 P.M.; 3 P.M. to 11 P.M. and 11 P.M. to 7 A.M. in the amount of one (1) hour at the straight time rate account of being deprived of working on their regular assigned positions from 7 A.M. to 8 A.M., 3 P.M. to 4 P.M. and 11 P.M. to 12 Midnight. The Employees also make claim in the amount of one (1) hour at the punitive rate for the Claimants being forced to work continuous with their regular bulletined hours from 3 P.M. to 4 P.M., 11 P.M. to 12 Midnight and 7 A.M. to 8 A.M.:

FIRST SHIFT

Name	Regular Bulletined Assignment	Hours Changed To
E. Bell	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.
C. Clear	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.
J. Smeltzer	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.
V. Kruse	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.
J. Pozek	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.
L. G. Smith	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.
R. Tittsworth	7 A.M. to 3 P.M.	8 A.M. to 4 P.M.

SECOND SHIFT

Name	Regular Bulletined Assignment	Hours Changed To
J. Ware	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
L. G. Bell	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
D. Tilton	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
L. Harpenau	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
F. Kaiser	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
T. McCall	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
G. Connell	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight
M. White	3 P. M. to 11 P. M.	4 P. M. to 12 Midnight

THIRD SHIFT

H. Barbarick	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.
H. Chadwick	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.
L. VanBecelaere	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.
D. P. Woods	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.
J. Williamson	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.
E. Dailey	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.
R. Schultz	11 P. M. to 7 A. M.	12 Mid. to 8 A. M.

The Employees are claiming time for all of the above mentioned Claimants as outlined above for each day and night thereafter as long as violation continues.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Co., hereinafter referred to as the carrier maintains a train yard at Kansas City, Missouri, including a running repair track identified as "spot rip track", where over 300 men are employed in the car department. For many years the men employed in the car department worked on a three-shift operation, i.e., twenty-four hours per day with three (3) starting times — 7:00 A. M., 3:00 P. M. and 11:00 P. M. On January 6, 1961, in addition to these three-shifts, carrier established a six-shift operation at Kansas City with starting times of 7 and 8 A. M.; 3 and 4 P. M.; 11 P. M. and 12 Midnight.

Claim was filed with carrier contending that the six shift operation established January 6, 1961, was in violation of the controlling agreement, and said dispute is now before your honorable board pending adjudication and is identified as Docket 4198.

On April 14, 1962 the following notice was posted at Kansas City, Missouri:

"Kansas City, Mo., April 14, 1962
File 300-14

Notice All Car Inspectors:

Effective close of shift April 16, 1962, following men will have starting and quitting times as listed below:

E. Bell—8 A. M. to 4 P. M. on Wed., Thurs., Fri., Sat., Sun.
C. Clear—8 A. M. to 4 P. M. on Mon.

J. Smeltzer—8 A. M. to 4 P. M. on Tue.
 J. Ware—4 P. M. to 12 mid. on Thur., Fri., Sat., Sun., Mon.
 L. G. Bell—4 P. M. to 12 Mid. on Tue.
 D. Tilton—4 P. M. to 12 mid. on Mon., Tue., Wed.
 L. Harpenau—4 P. M. to 12 mid. on Wed.
 H. Barbarick—12 mid. to 8 A. M. on Wed., Thur., Fri., Sat., Sun.
 H. Chadwick—12 mid. to 8 A. M. on Fri., Sat., Sun.
 L. Van Becelaere—12 mid. to 8 A. M. on Mon., Tue., Wed., Thur.
 V. Kruse—8 A. M. to 4 P. M. on Fri.
 J. Posek—8 A. M. to 4 P. M. on Sun., Mon., Tue., Wed., Thur.
 L. G. Smith—8 A. M. to 4 P. M. on Tue., Wed., Thur., Fri., Sat.
 R. Tittsworth—8 A. M. to 4 P. M. on Sun., Mon., Sat.
 F. Kaiser—4 P. M. to 12 mid. on Sun., Mon., Tue., Wed., 3 P. M. to 11 P. M. Thurs.
 T. McCall—4 P. M. to 12 mid. on Tue., Wed., Thur., Fri., Sat.
 G. Connell—4 P. M. to 12 mid. on Thur., Fri., Sat.
 M. White—4 P. M. to 12 mid. on Sun., Mon.
 D. P. Woods—12 mid. to 8 A. M. on Mon., Tue., Wed., Thur., Fri.
 J. Williamson—12 mid. to 8 A. M. on Sun., 11 P. M. to 7 A. M. on Wed., Thurs., Fri., Sat.
 P. Bergerhoffer—12 mid. to 8 A. M. on Tue., Wed., Thur., Fri., Sat.
 R. Schultz—12 mid. to 8 A. M. on Sat., Sun., Mon.

If any of above men are on vacation or jobs are being held temporarily by other men, they will use starting and quitting times as listed for that job.

Post:

All Shanties and
 Bulletin Boards

cc: LVH WFD VR JWM HCC
 All Men Involved

J. Manichia, GCF."

which in effect changed a portion of the employees from the first shift starting at 7 A. M. to the second shift starting at 8 A. M.; a portion of the employees from the third shift to the fourth shift from starting time of 3 P. M. to 4 P. M.; and changed a portion of the employees on the fifth shift starting at 11 P. M. to the sixth shift starting at 12 midnight.

In carrying out the action set forth in the above quoted notice of April 14, 1962, carrier failed to post a notice abolishing the old assignments and advertising the new jobs for bid. Carrier's failure to abolish the old jobs and

advertise the new jobs improperly denied the employees the right to exercise their seniority to the position of their choice.

When carrier made its initial move on January 6, 1961, (Case covered your Docket 4198) notice was posted abolishing the old assignments. Also notice was posted advertising the new assignments.

Carmen named in part 2 of "Claim of Employees" are regularly employed by the Carrier as Carmen and are hereinafter referred to as claimants.

This dispute has been handled with all officers of the carrier, including the highest designated officer of the carrier, designated to handle such disputes all of whom have declined to make satisfactory adjustment.

The agreement effective June 1, 1960 is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the employees have abundantly shown that carrier's action in establishing in excess of three (3) shifts of carmen in the train yard at Kansas City was in contravention of the controlling agreement.

With respect to the issue contained in the instant case, i.e., carrier's failure to abolish by bulletin the old jobs and advertise by bulletin the new jobs created by notice dated April 14, 1962, quoted in the employees' statement of facts, we respectfully submit that the proper procedure under the rules of the controlling agreement was to abolish the jobs on which the starting time was changed and re-bulletin them so that the principles of seniority could be complied with. Rule 13(a) of the controlling agreement reads:

"RULE 13(a)

FILLING VACANCIES OR NEW POSITIONS:

RULE 13(a) New jobs created and vacancies in the respective crafts will be bulletined and the oldest employees in point of service shall, if sufficient ability is shown by fair trial, be given preference in filling."

Also, the provisions of Rule 21(a) reading:

"RULE 21(a)

REDUCTION OF FORCES:

RULE 21(a) When the force is reduced seniority as per Rule 25 will govern; the men affected to take the rate of the job to which they are assigned. Employees displaced through the abolition of jobs or force reductions and other employees so affected thereby will be allowed to place themselves on such jobs as their seniority entitles them to, but only such employees who are actually disturbed by rearrangement of jobs or abolition of jobs will be permitted to exercise their seniority in this manner. Positions that have been abolished (not as the result for force reductions) and re-established within six months, the employee regularly assigned to the position at the time of its abolishment will be reassigned to the position regardless of seniority provided he applies therefor when the position is bulletined."

The provisions of Rules 13(a) and 21(a) when considered together make it abundantly clear that any time a job is disturbed by changing starting time, rest days, work location or duties that it is subject to be abolished and re-advertised.

Moreover, the record, employees' reveal that carrier is fully aware of the requirements of the agreement for they show that when carrier improperly and arbitrarily changed the starting time of certain jobs in the train yard at Kansas City in January 1961, it abolished the jobs on which change was made, and re-advertised them as new jobs.

Carrier by its arbitrary action deprived claimants of the right to remain on a job having a starting time of their choice, seniority permitting, and also deprived other employees at Kansas City of the right to exercise seniority to jobs having a starting time of their choice.

The procedure followed by carrier in the instant case not only deprived Claimants of the right to exercise their seniority as provided by Rules 13(a) and 21(a) but also defeats and destroys the provisions of Rule 8(a) reading:

"When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time."

The above provision of agreement would become null and void as carrier could change the hours of service on a day to day basis and defeat the purpose of the rule or need for overtime.

The foregoing clearly shows that carrier violated the agreement when they established in excess of three shifts of carmen and after establishing same failed to properly abolish the jobs on which the starting time was changed and re-advertise them as new jobs, therefore, claimants are entitled to be compensated one hour at the straight time rate of pay for each day they were deprived of working the established hours of their assignment as established prior to April 14, 1962.

Likewise claimants are entitled to be compensated one hour at time and one-half rate of pay for each day they were required to work after the regular quitting hour of their assignment as established prior to April 14, 1962, as Rule 4(a) provides:

"For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour."

Finally, the reasons hereinbefore set forth abundantly support the sustaining of this statement of dispute and the honorable members of your division are respectfully requested to do so.

CARRIER'S STATEMENT OF FACTS:

1. An agreement between the parties hereto, effective June 1, 1960, is on file with your Board, and is made a part hereof by reference.
2. Kansas City, Missouri, is an important terminal and switching point on the Missouri Pacific. Car inspectors are employed on three shifts, seven

suffered any loss. The shop craft agreement between the parties to this dispute is devoid of any provision which would impose a penalty on the carrier even if the carrier had violated the agreement in the manner alleged. Although the carrier emphatically denies that the carrier violated the shop craft agreement as alleged, sustaining the monetary claim even if a violation had occurred would impose a penalty on the carrier and give the claimants a windfall, neither of which result is provided for or contemplated by the terms of the shop craft agreement, and such an award would be beyond the jurisdiction of your board.

All of the monetary claim stated in paragraph 2 of the employees' statement of claim is in the nature of a penalty and cannot be sustained in any event, but we point out that a part of the claim covering the last hour during which claimants worked requests that the claimants be paid at the time and one-half rate. The punitive rate of time and one-half applies only when the employe performs the work in excess of 8 hours in any one day or 40 hours in any one work week or on a holiday. Here none of the employes met this qualification and are not entitled to punitive pay. Your board has so held as illustrated by Award No. 1632 of the Fourth Division in which your board held:

"There is nothing in this case which distinguishes it from the majority of awards from the several Divisions of this Board which hold that in order to qualify for punitive pay the work must have been actually performed in excess of eight hours. In the instant case, the claimant has not qualified himself for the punitive rate by doing the work which makes the higher rate applicable. The Carrier provided the proper compensation."

Claimants were assigned to work 8 hours a day during their work week and were paid 8 hours at the straight time rate. If the claimants worked beyond their regularly assigned 8-hour tour of duty, they were compensated at the punitive rate for such service beyond 8 hours in any one day. The work for which the punitive rate is claimed in this dispute was performed within the claimant's regularly assigned 8-hour day, and there is no basis for a claim for the punitive rate.

For the reasons stated, the carrier is not prohibited by the shop craft agreement from changing the assigned hours of existing positions within the starting time cycle provided by Rule 2, nor is there any requirement in the shop craft agreement contrary to the contentions of the employes which requires the carrier to abolish and rebulletin the same position on which the hours of service are changed. It follows that this claim 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 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.

exercise the latitude it did. Accordingly, we must deny the Organization's claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 9th day of December, 1964.