

Award No. 5432

Docket No. 5296

2-D&H-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 35, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

THE DELAWARE AND HUDSON RAILROAD CORPORATION

DISPUTE: CLAIM OF EMPLOYEES:

That the carrier violated the provisions of Rule #3 (a) of the controlling agreement, as amended September 1, 1956, when they arbitrarily abolished the established work hours on the first and second shifts and arbitrarily re-established a new schedule which provided for the starting and quitting times to be one hour later.

That Laborers J. J. Murphy, J. F. Amendola, Jr., N. Datzuff and P. Dempsey be compensated at the time and one-half rate for one hour each day for working over the established quitting time, commencing May 3, 1965, up to such time as an understanding on starting time of each shift at the Wilkes-Barre Engine Terminal, Wilkes-Barre, Pennsylvania, is reached between the parties as provided under Rule #3 (a).

EMPLOYEES' STATEMENT OF FACTS: Laborers J. J. Murphy, J. F. Amendola, Jr., N. Datzuff and P. Dempsey, hereinafter referred to as Claimants, were regularly employed as laborers by the Delaware and Hudson Railroad, hereinafter referred to as Carrier, in its Wilkes-Barre Roundhouse with hours of service for the first shift 7:00 A. M. to 3:00 P. M. and for the second shift 5:30 P. M. to 1:30 A. M.

On April 20, 1965 Carrier properly notified Claimants by bulletin posted on the bulletin board that effective Sunday, April 25, 1965 their hours of service would be 6:00 A. M. to 2:00 P. M. for the first shift and 4:30 P. M. to 12:30 A. M. for the second shift. Copy of the bulletin posted is attached hereto as Exhibit A. On May 3, 1965, Claimant were informed, without notice or discussion with the local committee, that the hours of service were changed immediately to 7:00 A. M. to 3:00 P. M. for the first shift and 5:30 P. M. to 1:30 A. M. for the second shift. On May 3, 1965, Local Chairman Joseph F. Amendola, Jr. wrote to General Foreman Norella protesting Carrier's arbitrary change in the hours of service, copy of which is attached as Exhibit B. Receiving no satisfaction from the General Foreman, on May 17, 1965, the Local Chairman filed a claim in behalf of the Claimants, copy attached as Exhibit

passenger station during the periods involved. In which case we believe that the claims presented should be denied.

Award: Claim denied."

After the changes were made in the starting times of the two shifts at Wilkes-Barre it became apparent that such changes were incompatible with revised service requirements. Supervisor officers at Wilkes-Barre discussed the matter with all concerned, explaining the necessity for returning to the previous starting times. There was no objection by representatives of any of the four crafts involved, and no claim except this one. It is the position of the Carrier that the rules of the applicable agreement were fully complied with, and that therefore the claim should be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the Committee and made a part of the particular question in dispute.

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.

On April 20, 1965 Carrier notified claimants by bulletin that effective Sunday, April 25, 1965, their hours of service would be 6:00 A. M. to 2:00 P. M. for the first shift and 4:30 P. M. to 12:30 A. M. for the second shift. On May 3, 1965, the starting time was again changed back to the original starting time 7:00 A. M. to 3:00 P. M. for the first shift and 5:30 P. M. to 1:30 A. M. for the second shift. The introduction of the daylight saving time schedule caused the first change in starting time, however, after operating on that schedule the time was changed back to the old schedule for the good of the service.

The claimants contend they were informed without notice of discussions required by Rule #3 as to the latter starting time, from daylight savings time to standard time.

"Rule 3 (a) There may be one, two or three shifts employed. 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."

The Carrier contends they informed the local representative and he replied, "guessed it was all right." No other organizations on the property objected to the manner in which the time change was introduced. The claimants deny any such conversation took place. In addition they communicated with the Carrier by letter May 3, 1965, objecting to the change in working hours, without discussion, (Exhibit B), and the Carrier replied on May 24, 1965 * * * Claim denied. Not supported by agreement."

We are presented here with a dispute in facts which is impossible to resolve from the record. Exhibit B, presented by the claimants implies an objection to the change over for personal and community reasons. Exhibit C, letter from the Carrier as cited by the Claimant, does not go to the merits of the issue. The change to the daylight savings schedule was by bulletin while nothing in the record shows any attempt on the part of the Carrier to inform the claimants of the change back to standard time except the alleged statement of the representative, "guessed it was all right."

Thus on the whole record the Board is of the opinion that Rule 3 was violated by not informing the claimants of the change back to standard time by either oral or written notice.

On the question of compensation, the Board denies the claim for the following reasons:

1. No time loss.

2. From the record it is impossible to determine the extent of the compensation. The claim is "for one hour each day for working over the established quitting time, commencing May 3, 1965, up to such time as an understanding on starting time of each shift at the Wilkes-Barre Engine Terminal, Wilkes-Barre, Pennsylvania, is reached between the parties as provided under Rule #3(a)."

The record does not state when such an understanding was established. Thus an attempt to establish a date would be speculative and not supported by the record.

3. The record does not establish bad faith on the part of the Carrier.

AWARD

Claim sustained in part and denied in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1968.