



Award No. 5735

Docket No. 5600

2-Pull-EW '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (ELECTRICAL WORKERS)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Pullman Company violated the controlling agreement, particularly Rule 22(c) when they improperly declined to establish shifts of eight (8) consecutive hours including an allowance of 20 minutes for lunch.
2. That accordingly the Pullman Company be ordered to: A. To additionally compensate each of the Electricians who work from 7:30 A.M. to 4 P.M. or 9 A.M. to 5:30 P.M. in the amount of forty (40) minutes at the overtime rate for each day they are required to work these hours beginning with December 16, 1966. B. To additionally compensate each of the Electricians who work from 1:00 P.M. to 9:30 P.M. in amount of three (3) hours and forty (40) minutes at overtime rate for each day they are required to work these hours beginning with December 16, 1966. C. To additionally compensate each of the Electricians who work from 11:00 P.M. to 7:00 A.M. in the amount of two (2) hours and forty (40) minutes at the overtime rate for each day they are required to work these hours beginning with December 16, 1966.

EMPLOYEES STATEMENT OF FACTS: The Pullman Company herein-after referred to as the Carrier, at their Miami District in previous years, during the Winter season, did establish regular shifts in accord with Rule 22 (c) as follows:

8:00 A.M.— 4:00 P.M.

4:00 P.M.—12:00 M.

12:00 M. — 8:00 P.M.

hour of each shift, with no need for an excepted position.

Without any change in the arrival and departure times nor the number of trains arriving or departing from this District, the Pullman Company, during the 1965-1966 Winter season, established shifts as follows:

was correctly applied in establishing the 1966-1967 winter season shifts of electricians in the Miami District, which paragraph (b) provides for as many as three starting times between the hours of 7:00 A.M. and 9:00 A.M. and an additional starting time at either 3:00 P.M. or at 11:00 P.M. It has been shown that Management established a shift starting at 7:30 A.M. and a shift starting at 9:00 A.M. and a third shift starting at 11:00 P.M. Additionally, the Company has shown in this submission that the "exception" shift starting at 1:00 P.M. does not interfere with the application of the provisions of Rule 22 (b). Further, the Company has shown herein that Second Division Award 1629 (Carter) confirms the correctness of Management's procedure in the instant case. Finally, the Company has shown that the Organization has not complied with the requirement of Rule 51. **Alleged Unjust Treatment and Alleged Rule Violations** in that it has failed to identify the claimants who allegedly were injured in the case.

The claim is singularly lacking in merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employees or to their representative and made a part of this hearing.

(Exhibits not reproduced)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 issue in this case, framed by paragraph 1 of the Claim, is whether Carrier violated Rule 22 of the Agreement, particularly Rule 22(c) in not establishing "regular shifts during all of the 24 hours of the day" in the Miami District during the 1966-1967 winter season. What shifts had been established theretofore is immaterial. The determination of "necessary" shifts, at anytime, is vested in Carrier so long as effectuated in compliance with Rule 22.

Paragraphs (B) and (C) and the "Exception" in Rule 22 are pertinent in resolving the issue.

In Award No. 1629 we spelled out the requirements of paragraphs (B) and (C):

"The question involved in this dispute is whether or not Rule 22 (b) or Rule 22 (c), current agreement, applies to the situation existing at carrier's Pennsylvania Railroad Coach Yard at Pittsburgh. The provisions of the rule in question provide in substance that in yards where employees are required to work after 6:00 P.M., three starting times may be established between 7:00 A.M. and 9:00 A.M. and one additional starting time may be established at 3:00 P.M. or 11:00

P.M. Under this provision, the lunch period was subject to agreement except that the shift starting at 3:00 P.M. or 11:00 P.M. should consist of eight (8) consecutive hours including an allowance of 20 minutes for lunch within the limits of the fifth hour. Rule 22(b). In yards where regular shifts are used during all the twenty-four hours of the day, three starting times may be established between 7:00 A.M. and 9 A.M. and additional starting times may be established at 4:00 P.M. and 12:00 midnight. Each shift established under this provision shall consist of eight (8) consecutive hours including 20 minutes for lunch within the fifth hour. Rule 22 (c)."

and, further, held that:

"... Any assignment established in accordance with the exception set out at the end of Rule 22 would not, of course, constitute a basis for claim."

The Exception reads:

"Exception: Where the requirements of the service necessitate the assignment of employees (in any case not to exceed two employees) to perform service such as station duty, precooling or incoming test, commencing at starting times not provided for in this rule, the starting times of such employees shall not be established between the hours of 12:00 midnight and 6:00 A.M. and shall be subject to mutual agreement between the supervisor in charge and the chairman of the local committee."

For the period here involved Carrier established the following shifts:

- (1): 7:30 A.M. to 4:00 P.M.
- (2): 9:00 A.M. to 5:00 P.M.
- (3): 1:00 P.M. to 9:00 P.M.
- (4): 11:00 P.M. to 7:00 A.M.

of which (1) (2) and (4) had starting times within the prescription of Rule 22(b); and, (3), says Carrier, was established pursuant to the "Exception" prescribed in the Rule. Organization says, without allegation in the Claim, that shift numbered (3), above, the Exception shift, was not established by "mutual agreement between the supervisor and the chairman of the local committee" — a required condition precedent prescribed in the "Exception." But it adduced no evidence that this "Exception" shift, contractually, should have been established as a regular shift which would make it necessary "to work regular shifts during all the 24 hours of the day" and bring the proven facts within the ambit of Rule 22(c).

We repeat, for emphasis, that the Claim is predicated on an allegation that Carrier "improperly declined to establish shifts of eight (8) consecutive hours including an allowance of 20 minutes for lunch."

In the light of record most favorable to Organization it has the burden of proving, conjunctively, that the "Exception" shift—1:00 P.M. to 9:00 P.M.—should have contractually been established: (1) as a "necessary . . . regular shift;" and (2) which would have resulted in "regular shifts during all of

the 24 hours of the day." It failed to satisfy the burden. We, therefore, are compelled to deny the Claim.

Where it is not alleged in the Claim and proven that Carrier established an "Exception" position in violation of Rule 22, Carrier is contractually enjoined only from assigning to the position work other than "service such as station duty, precooling or incoming test commencing at starting times not provided for" in Rule 22. The remedy for a violation of the injunction, by the Carrier, is as held in Award No. 5531.

Succinctly, the instant claim fails for lack of proof that Carrier was contractually required under the facts of record, "to establish shifts of eight (8) consecutive hours" during all of the 24 hours of the day.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.