

Award No. 5990
Docket No. 5815
2-SLSW-(CM)-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

ST. LOUIS-SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the rules of the current controlling agreement the Carrier improperly established a fourth shift of Carmen in the Gravity Yard at Pine Bluff, Arkansas on August 2, 1967.

2. That accordingly the Carrier be ordered to additionally compensate Carmen J. H. Findley, O. O. McEntire, R. C. Durham, J. T. Wright, W. D. Bussell, B. W. Hankins, and W. H. Fergusson for one hour each at the pro rata rate for August 2, 1967, and one hour each at pro rata rate for each Carman working on the Cleaning Track each day the violation continues subsequent to August 2, 1967.

EMPLOYEES' STATEMENT OF FACTS: The St. Louis Southwestern Railway Lines, hereinafter referred to as the Carrier, maintains at Pine Bluff, Arkansas, a hump-yard, commonly known as "The Gravity Yard", a portion of which is designed for making up, inspecting and running of trains through this terminal, and, in addition, a portion of the yard has been set aside for a Spot Repair Track and Cleaning Track. On the Spot Repair Tracks, running repairs are made to cars bad-ordered by Car Inspectors in the inspection yard, and cars are repaired and upgraded on the Cleaning Track for loading of paper and grain.

Prior to August 2, 1967, the shifts and number of Carmen employed in the Gravity Yard at Pine Bluff, working seven days a week, were as follows:

	7 AM to 3 PM	3 PM to 11 PM	11 PM to 7 AM
Spot Repair Track Carmen & Welders	16	15	15
Cleaning Track Carmen & Welders	10	None	None
Car Inspectors	19	20	23

men on the cleaning track reverted to 7:00 A.M.-3:00 P.M. without an assigned meal period.

In summary, Carrier submits that:

1. The rules do not prohibit the assignment of a lunch period as was done in this case.
2. Carrier in good faith and in accordance with Rule 2-2 of the current agreement attempted to secure the concurrence of the organization as to the time and length of the lunch period.
3. After this attempt failed, and the Employees refused to even make a token effort to reach an agreement, Carrier had no choice but to place the change into effect.
4. Awards of the Second Division, National Railroad Adjustment Board, as well as the past practice on this property, support Carrier's position.

Carrier respectfully submits that the claim is not supported by the rules, and requests that it 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 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.

Prior to March, 1967 at Carrier's terminal at Pine Bluff, Arkansas, carmen used on the cleaning track had a 7:00 A.M. to 3:00 P.M. shift with 20 minutes for lunch.

In March, 1967, Carrier determined that because of operational necessity, the hours of the cleaning staff force should be changed to 7:00 A.M. to 3:30 P.M., with a 30-minute lunch period. Carrier's Master Mechanic advised the Organization's General Chairman of the proposed change. The General Chairman indicated he was not agreeable to the proposed change. Subsequently, the Master Mechanic requested the General Chairman to reconsider the matter. The General Chairman did not reply. On July 28, 1967, Carrier's General Car Foreman issued a notice effecting the change as of August 2, 1967.

By letter dated September 22, 1967, Claimants, through the Organization, filed a claim alleging:

"On August 2, 1967, the Carrier unilaterally changed the hours of Carmen working on the Cleaning Track from 7:00 A.M. to 3:00 P.M., with twenty minutes for lunch, to 7:00 A.M. to 12:00 Noon and 12:30 P.M. to 3:30 P.M., thereby establishing a fourth shift of Carmen, in violation of Rule 2-1, * * *."

Rule 2-1 provides:

"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 employees' committee, based on actual service requirements."

Rule 2-2 provides:

"The time and length of the lunch period shall be subject to mutual agreement."

An analysis of the record indicates that the Cleaning Track is a separate and independent operation from the Car Inspection and Spot Repair facilities in the Gravity Yard. As compared to three shifts for the other facilities, there is only one for the Cleaning Track. As such, Rule 2-3 does not come into play. Moreover, the record shows that carmen assigned on the Cleaning Track have a separate overtime board from carmen on the repair track and on the inspection force.

There is no rule on this property, unlike other properties, which requires the same starting and quitting time for all men on each shift.

Carrier made a valid effort to arrive at a mutual agreement with the Organization regarding the changes put into effect. Where, as here, there is no effort to reach agreement, Carrier may assert its prerogative and effect the change required. Awards 2722 and 4149.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.