

Award No. 6219
Docket No. 6024
2-DM&IR-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 71, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That in violation of the current agreement, the Carrier abolished the established working hours on the first shift and second shift at the Two Harbors Yard (Car Department).

2. That accordingly the Carrier be ordered to additionally compensate the following carmen employed on the first and second shifts and any other unnamed carmen who were also assigned to the changed shifts at straight time rate beginning on the dates as indicated and for as long as these shifts remain in effect:

R. F. Poulin: 1 P. M. to 9 P. M. - effective 4-28-69 - 7½ hours daily
W. L. Waxlax: 1 P. M. to 9 P. M. - effective 4-28-69 - 7½ hours daily
H. E. Rosen: 9 P. M. to 5 A. M. - effective 4-28-69 - 1½ hours daily
O. P. Sauer: 9 P. M. to 5 A. M. - effective 4-28-69 - 1½ hours daily
L. F. Alstrom: 9 P. M. to 5 A. M. - effective 4-28-69 - 1½ hours daily
G. E. Olson: 1 P. M. to 9 P. M. - effective 4-28-69 - 7½ hours daily
D. B. Kulas: 1 P. M. to 9 P. M. - effective 4-30-69 - 7½ hours daily
R. E. Keller: 1 P. M. to 9 P. M. - effective 4-30-69 - 7½ hours daily

EMPLOYEES' STATEMENT OF FACTS: The Carmen named above, hereinafter referred to as the claimants, are employed by the Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as the carrier, at carrier's yards in Two Harbors, Minnesota. Two Harbors is the designated headquarters point for Carrier's Iron Range Division.

During the handling of this case on the property, the employes have relied on a number of unsupported assertions, and have not clearly spelled out their position. However, as the carrier understands it, they are contending that the starting times of the disputed assignments are in violation of the provisions of paragraphs (a) and (b) of Rule 5, and that paragraph (f) of the rule is inapplicable to assignments in Two Harbors yard.

It is the carrier's position that paragraph (f) of Rule 5 very clearly modifies the provisions of paragraphs (a) and (b) with respect to assignments in train yards where one shift or two shifts are worked, and it clearly states: "At all train yards." (Emphasis ours.) It does not contain language which could possibly support the conclusion that it does not apply at the Two Harbors train yard.

The Carrier asserts that the employes are incorrectly interpreting paragraph (f) of Rule 5, and are concluding that since the engine terminal at Two Harbors is specifically excluded from the rule, the entire geographical area of Two Harbors is excluded. The Carrier submits that this, obviously, is not the case. The very fact that the engine terminal at Two Harbors is specifically excluded from the provisions of the rule should conclusively establish that if it were the intention of the writers of the rule to exclude the train yard at Two Harbors, they would have done so in the construction of the rule. On the contrary, however, the rule clearly spells out that it applies at all train yards.

In summary, it is the Carrier's position that:

1. The assignments in question in this case were properly established in accordance with the clearly worded provisions of paragraph (f) of Rule 5.
2. The Employes have, for a period of many years, concurred in the Carrier's interpretation and application of the rule in question.
3. The Employes' contention that Rule 5(f) is inapplicable to assignments at the Two Harbors train yard is erroneous and cannot be supported by the terms of the effective agreement.

Notwithstanding the foregoing and without waiving its position with respect to the lack of merit of the instant claims, the claims for payment at the overtime rate are excessive, since the overtime claimed was not worked or earned and cannot be supported by Rule 6, Overtime and Calls, or any other rule of the effective agreement.

In conclusion, the Carrier has shown without question that there is no basis for the claims in this case, and respectfully requests that they be denied by your Honorable Board.

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 facts are not in dispute. Hours of work for the first shift were changed from 8:00 A. M. to 4:00 P. M. to 1:00 P. M. to 9:00 P. M. and for the second shift from 4:00 P. M. to 12:00 Midnight to 9:00 P. M. to 5:00 A. M. The issue is whether Rule 5 (a) and (b) or Rule 5 (f) is controlling.

Rule 5 (a) and (b) provides for a starting time in the first shift not earlier than 7:00 A. M. and not later than 8:00 A. M., and a starting time for the second shift not "earlier than the close of the first shift, nor later than 8:00 P. M."

Rule 5 (f) reads:

"At all train yards and ore docks, and at engine terminals other than Proctor and Two Harbors, where one shift or two shifts are worked, working hours shall be based on service requirements, except that no shift will be started between the hours of 12:00 Midnight and 6:00 A. M."

Petitioner argues that Rule 5 (f) specifically excludes Two Harbors, where the claim arose, from the provisions therein. The Carrier contends that Two Harbors is excluded from that rule only at its engine terminal, and not at its train yard where the change in the work schedule was made.

Rule 5 (f) is a specific provision which takes precedence over the general provisions in Rule 5 (a) and (b). From a reading of Rule 5 (f), it is conceivable that it could be interpreted either way, although the language lends itself more to exclusion alone of the engine terminal at Two Harbors. In any event, the language is somewhat ambiguous. It is not clear and meaningful, as argued by the Petitioner.

The record shows, without serious contradiction, that for a number of years prior to the current incident, the employes at Two Harbors have been assigned starting times at 1:00 P. M., 2:00 P. M., 9:00 P. M., and 10:00 P. M., and that no protests were filed, and no claims were presented. Petitioner's only reply to this firmly established practice is that it had no prior knowledge of this because no local committee had been in existence on the property. This is not a sufficient defense to a practice that has existed on this property for a considerable length of time. That practice represents the meaning and intent which the parties gave to the ambiguous language in Rule 5 (f).

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.

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