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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6433  
Docket No. 6291  
2-PT-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: ( System Federation No. 18 Railway Employees'  
( Department A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Portland Terminal Company

Dispute: Claim of Employees:

- (a) That the Portland Terminal Company violated the provisions of the controlling agreement, namely Rule No. 2, beginning on June 29, 1970, by establishing a lap shift at Portland Yard No. 8.
- (b) That the Carrier be ordered to additionally compensate one hour each day at the time and one-half Carmen's rate of pay to Mr. J. U. Geoffroy, regular assigned Carman on the first trick at Portland Yard No. 8, beginning on June 29, 1970, and for each such day thereafter as long as violation continued to remain in effect.
- (c) That the Carrier be ordered to additionally compensate Mr. D. E. Perkins, Carman, one hour for each day at the time and one-half rate for the period of July 17 through August 7, 1970, and September 14 through September 17, 1970, (due to Mr. J. U. Geoffroy's vacation leave) and for each such day thereafter that Mr. D. E. Perkins covered this assignment, during the absence of Mr. J. U. Geoffroy.

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 Organization claims that the Portland Terminal Company includes the Rigby Car Department and Yard 8 as one point. The carmen assigned at yard 8, two rail miles from the Rigby yard, are on the same seniority roster as all other carmen employed at the Terminal. All carmen at Rigby work shifts from 7 A.M. - 3 P. M.,

3 P.M. - 11 P.M., 11 P.M. - 7 A.M. Starting on June 29, the Carrier established a shift for one carman at Yard 8 from 6 A.M. - 2 P.M. The Organization contends that this is a change which creates a lap shift because all other carmen in the Rigby Car Department work a shift from 7 A.M. - 3 P.M. The relief position covering Yard 8 on Saturday remained at 7 A.M. - 3 P.M.

The Organization relies for its claim upon the Agreement, Rule No. 2 (a) which states that, "The starting time of work and meal period and duration of each shall be arranged, by mutual understanding, consistent with economical and efficient dispatch of work and the requirements of service, and meet the convenience of the employes so far as practicable."

The Organization also refers to Second Division Award No. 595 to support its argument that no lap shift position or any change in hours may be accomplished unless there is the mutual understanding required by Rule No. 2 (a). That Award held that the Rule and a Memorandum of Understanding concerning the Rule, made in 1937, clearly requires the parties to arrive at starting times, by mutual understanding.

The Carrier disagrees with the Organization by maintaining that Yard 8 is three miles away from the Rigby Car Department; that Yard 8 is located in the City of Portland while the Rigby Department is located in the City of South Portland.

The Carrier relies upon the Argument that Award No. 595 was concerned only with the Rigby Car Department and does not apply to Yard 8.

The Carrier also relies upon Rule 2 (a) to justify its action because the 6 A.M. starting time was, "----, consistent with economical and efficient dispatch of work and the requirements of service,----." The Carrier explains this by the fact that Yard 8 is no longer a busy industrial yard and now requires only one assigned carman within a twenty-four hour period. Rigby yard, on the other hand, is a round-the-clock operation employing twenty-seven carmen on the first trick alone, for car inspection duty. In addition, the Cumberland Mills Switcher which departed from Yard 8 at 7:30 A.M. Monday-Friday prior to June 29, was required to leave at 6:30 A.M. when the Paper Mill changed its requirements. Consistent with economy, efficiency and requirements of service, the Carrier also abolished the second shift at Yard 8; there was no third shift. The Carrier has argued also that it met the convenience of the employes, as required by Rule 2 (a), as evidenced by the fact that the claimant readily bid for the new starting time position. The economy was effected by eliminating the need to pay overtime rate for one hour from 6 A.M. - 7 A.M.

The Organization answered this by arguing that there is a regularly assigned position on the 3 P.M. - 11 P.M. shift at Rigby yard, Monday-Friday, which handles all the car inspection duties at Yard 8 in the afternoon and returns to Rigby to complete the assignment. On the last trick, carmen are sent to Yard 8 if needed, from Rigby. Also, under Rule 4 (a) of the Agreement, the Organization was willing to allow the carman to be called in at 6:20 A.M., which would provide forty minutes of work at a straight time rate for one hour. Also, on Saturday a carman working 7 A.M. - 3 P.M. at Rigby is sent to Yard 8 to perform necessary duties and then

returned to Rigby to complete his assignment. The Organization claims that this rebuts the economy and efficiency arguments and also the contention that Yard 8 is a separate point, not affected by starting time schedules at Rigby. The Organization further claims that when the Carrier went back to the 7 A.M. starting time at Yard 8, as it did in January 1971, it was an admission that it had not complied with with Rule 2 (a).

The Carrier countered this last assertion of the Organization by the fact that on January 28, 1971 the Cumberland Mills Switcher departure time was changed back to 7:30 A.M. as required by the Paper Mill. The Carrier also explained the Relief assignment by the fact that it covered four rest days at Rigby, and Saturdays at Yard 8 to make a five day assignment. The Relief starting time on Saturday had not been changed from 7 A.M. because the Switcher did not operate from Yard 8 on Saturdays. In addition, the Carrier categorically denies the Organization's claim that it had constantly brought up in the conferences that no meeting was held with the Local Committee or understanding made for the change in starting time.

We have set forth the arguments and disagreements of the parties at length because it has been urged that this claim should be dismissed because of the conflicting statements of the parties. It is not the province of this Board to weigh conflicting evidence to resolve a dispute, Second Division Awards No's. 5577, 5604, 5902, 6192 and 6226. It is also true that Award No. 595 referred only to the Rigby Car Department.

Opposing arguments are not the same as conflicting evidence. The parties disagree on whether or not Yard 8 is two rail miles away as claimed by the Organization or three miles as stated by the Carrier. Neither party has submitted evidence of past practice which has or has not separated Yard 8 from the Rigby Car Department. It is not disputed that all carmen are employed by Portland Terminal Company. It is not disputed that there is a single seniority roster, nor has the Carrier disagreed with the statements that carmen are frequently sent from Rigby to Yard 8 for car inspection duty and return to Rigby to complete their assignments. No extra pay for travel time is paid nor does the Carrier contend that Yard 8 is an outlying point. Matters of this kind are taken up in the Agreement under Rule 9, Temporary Vacancy-Outlying Points; Rule 15, Employes Transferred; Rule 41, One Man Points (Where only one man of a craft is employed at an outlying point).

Award No. 595 is explicit for the Rigby Yard. It specifically requires a strict and literal adherence to Rule 2 (a), when a starting time is changed. The Carrier obviously does not claim that it arranged the new starting time of 6 A.M. by a mutual understanding. Equitably and logically, the Carrier had a good reason to do as it did. But equity and logic do not overcome the plain, clear language of the agreement reinforced by the Memorandum of Understanding of 1937 specifically set forth in Award No. 595, including the recorded conference of the parties in 1937, set forth in the Award.

The sole issue is whether or not Yard 8 can be separated from Rigby in applying the rules and agreements observed at the Rigby Yard. We believe that there is

no such separation and that Rule No. 2 (a) was violated.

Neither party has submitted argument to support or deny the right to time and one half pay as claimed. The record indicates that no time was lost, that 8 hours were worked each day, one hour of which was before the starting time in dispute. Usually, we do not award punitive pay within a scheduled 8 hour shift. Accordingly, if the claim is based upon Rule 4 (e), of the Agreement, it should be adjusted to comply with that provision. Otherwise, there does not appear to be a basis for additional compensation as specified in (b) and (c) of the claim.

A W A R D

Claim sustained as to (a)

Claims (b) and (c) disposed of as set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: \_\_\_\_\_

*E. A. Killian*  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.