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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6523
Docket No. 6388
2-NOPB-CM-'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 99, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 {
 { New Orleans Public Belt Railroad

Dispute: Claim of Employees:

1. That the Agreement was violated when on February 15, 1971, Car Department Bulletin No. 81 was put into effect in violation of Rules 2 and 5 of the current Agreement, as amended.
2. That under the current applicable agreement, Carman E. Weigand, employed by the New Orleans Public Belt Railroad is entitled to compensation for one (1) hour at the time and one-half rate of pay for February 15, 16, 17, 18 and 19, 1971, and for each and every day thereafter until claimed violation is corrected, that Carman J. Babin also employed by the New Orleans Public Belt Railroad is entitled to the same benefits for February 20 and 27, 1971 and for each and every day thereafter that he is assigned to work Relief Assignment at Race Yard from 7 AM to 4 PM until claimed violation is corrected.
3. That in the event either Mr. Weigand and/or Mr. Babin leave these assignments for any reason, the carman and/or carmen working these assignments will be the Claimant's for the days they work said assignments.
4. That accordingly, the New Orleans Public Belt Railroad be ordered to compensate Carmen Weigand and Babin for one (1) hour at the time and one-half rate of pay for said violation.
5. That accordingly, in addition to the money amounts claimed herein, the New Orleans Public Belt Railroad be ordered to compensate Carmen Weigand and Babin an additional amount of 6% per annum compounded annually on the anniversary dates of February 15 and 20, 1971, respectively.
6. That accordingly, this claim should be allowed as presented, because the New Orleans Public Belt Railroad did not comply with the time limit under the grievance provisions of the Agreement.

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.

This claim is based on an alleged violation of rules 2 and 5 of the Agreement between the parties. The alleged violations took place when Carrier put into effect Bulletin No. 81 on February 15, 1971.

RULE 2 - ONE SHIFT

"When one shift is employed, the starting time shall not be earlier than 7 o'clock nor later than 8 o'clock. The time and length of the lunch period shall be arranged by mutual agreement."

RULE 5 - UNIFORM COMMENCING AND QUITTING

"The time established for commencing and quitting work for all men on each shift in either the Car or Locomotive Department shall be the same at the respective points but where three shifts are worked by running repair forces, and two shifts by back shop forces, the quitting time of the first shift and the commencing and quitting time of the second shift of back shop forces will be governed by the provisions of Rule 3. (Exception -- It is agreed that three eight hour shifts may be established under the provisions of Rule 4 for the employees necessary to the continuous operation of Power Houses, Mill Wright Gangs, Heat Treating Plants, Train Yard, running repair and inspection forces without extending the provision of Rule 4 to the balance of the shop force.)"

BULLETIN NO. 81

"TO: ALL BULLETIN BOARDS

Effective at 7:00 A.M. Monday, February 15, 1971 the following
Carmen-Inspector Assignments are abolished:

<u>ASSIGNMENT</u>	<u>HOURS</u>	
Race St. - Mon. - Fri.	7:00 A.M. - 3:00 P.M.	B. Weigand
Race St. - Mon. - Fri.	3:00 P.M. - 11:00 P.M.	A. Findorff
Race St. - Mon. - Fri.	3:00 P.M. - 11:00 P.M.	F. Bendio
Race St. - Tue. - Sat.	11:00 P.M. - 7:00 P.M.	E. Cuchmann
Claib. Yd - Mon. - Fri.	3:00 P.M. - 11:00 P.M.	L. Quigley
<u>Relief Assignment #3</u>		
Claib. Repair Track	7:00 A.M. - 3:30 P.M.	
Wed., Thurs., Fri.		J. Limbarg
Race St. Sat.	3:00 PM - 11:00 PM	J. Limbarg
Race St. Mon.	11:00 PM - 7:00 AM	J. Limbarg
<u>Relief Assignment #5</u>		
Claib. Repair Track	7:00 AM - 3:30 PM	
Tue., Wed., Thurs.		J. Babin
Race St. Sat.	7:00 AM - 3:00 PM	J. Babin
Claib. Yd. Mon.	7:00 AM - 3:00 PM	J. Babin

Applications will be received at the office of the Superintendent,
car Department until 10:00 AM Friday for the following Carman-Inspector
Assignments:

- (1) Carman-Inspector, Race St. Yard, hours 7:00 AM to 4:00 PM, with
(1) one hour lunch period between 12:00 Noon and 1:00 PM, Monday
thru Friday, rest days Saturday and Sunday.
- (2) Carman-Inspector, Race St. Yard, hours 4:00 PM to 12:00 PM, with
20 minutes allowed for lunch, Monday through Friday, rest days,
Saturday and Sunday.

- (3) Carman-Inspector, Race St. Yard, hours 4:00 PM to 12:00 PM, with 20 minutes allowed for lunch, Monday through Friday rest days, Saturday and Sunday.

- (4) Relief Assignmant #3 Carman-Inspector relieving on Assignments as follows:

Tuesday, Wednesday, Thursday and Friday, Claiborne Repair Track, hours 7:00 AM - 3:30 PM, with 30 minutes lunch period.

Saturday, Race St. Yard, hours 4:00 PM to 12:00 PM, with 20 minutes allowed for lunch. Rest days, Sunday and Monday.

- (5) Relief Assignment #5 - Carman-Inspector Relieving on assignments as follows:

Monday - Claiborne Yard. hours 7:00 AM to 3:00 PM with 20 minutes allowed for lunch.

Tuesday, Wednesday and Thursday, Claiborne Repair Track, hours 7:00 AM to 3:30 PM, with 30 minutes lunch period.

Saturday, Race St. Yard, hours 7:00 AM to 4:00 PM, with (1) hour lunch period between 12:00 Noon and 1:00 PM. Rest days, Friday and Sunday.

Successful bidders will be assigned to these assignments effective 7:00 AM, Monday, February 15, 1971."

The Organization alleges that the Carrier failed to timely deny the claim under the time limit rule and that it should be sustained as presented. The Carrier denies any procedural defect.

On July 10, 1971 the General Chairman wrote an appeal letter from the Carrier's initial denial of the claim. On October 18, 1971, the General Chairman wrote the Carrier again asking that the claim be allowed as presented in that the time limit had expired. On October 22, 1971, the Carrier responded to the effect that a previous letter upholding the denial had been sent on August 31, 1971. A copy of a denial letter dated August 4, 1971, was attached.

We find that the Carrier has not proved that its notice of denial was received by the General Chairman within the sixty (60) day time limit. Accordingly, we shall allow the claim as presented without interest from February 15, 1971 to October 22, 1971. See award No. 4853 (Levi M. Hall). Any award made which would cover the period subsequent to October 22, 1971 must be made on the merits of the case.

The gravamen of the complaint is that the Bulletin created differing commencing and/or quitting times for the Carmen-Inspectors at Race Yard as opposed to other Carmen-Inspectors assignments on the Carrier in violation of the proper application of Rule 5. Rule 2 is not applicable in that more than one shift is employed at Race Yard.

In order for the claimants to prevail, it must first be established that the various locations on the Carrier's property constitute a single point. (See Rule 5). We are unable to find evidence to support such a conclusion. The question of whether the Carrier's entire operations are considered to be carried on at a single point was decided in the negative in Award 5168 (Weston) which Award was between the same parties. Accordingly, we can find no basis for a sustaining award for the period subsequent to October 22, 1971.

A W A R D

Claim sustained in part and denied in part, in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killean

Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.