

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Central Railroad Company of New Jersey

Dispute: Claim of Employees:

1. That the Carrier violated the provisions of the agreement when they abolished Car Inspector's positions on the 1st Trick, 2nd Trick and relief position at the Bayhead Engine Terminal in New Jersey, effective October 20, 1972 and then unilaterally and arbitrarily without agreement rebulletined positions with new starting times, relief position that does not relieve on certain dates, and created lapped shifts effective October 23, 1972.
2. Further, that Carrier violated the procedural provisions of the Agreement by failure to notify the local chairman in writing of its decision within sixty (60) days from the date claim was filed.
3. That accordingly, the Carrier be required to restore the original shifts and make the claimants whole from October 23, 1972 and continuously for every day thereafter for Car Inspector H. E. Bennett, employed on the 1st Trick Monday through Friday four (4) hours at the punitive rate from 4:00 AM to 8:00 AM, and four (4) hours at the straight time rate from 12:00 Noon to 4:00 PM; Car Inspector G. W. Sweeney on the 2nd Trick for every Monday, Tuesday and Wednesday two (2) hours and forty (40) minutes at the punitive rate from 2:00 PM to 4:00 PM (call time) and two (2) hours at the straight time rate from 10:00 PM to 12:00 Midnight. Relief position Car Inspector J. J. Garrett for every Thursday and Friday, two (2) hours and forty (40) minutes at punitive rate from 2:00 PM to 4:00 pm and two (2) hours at the straight time rate from 10:00 PM to 12:00 Midnight. For vacation relief Car Inspector P. F. Pederson for Thursday and Friday October 26 and 27, 1972, the same applicable rate as applied to J. J. Garrett.

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.

Claimants are employed as Car Inspectors at Carrier's Bayhead Engine Terminal. On October 4, 1972, Carrier posted a bulletin abolishing the Car Inspector's positions on the first and second shift, as well as the relief position. On the same date, Carrier bulletined the abolished positions with new starting times. On October 6, 1972 the Organization's General Chairman wrote Carrier's Chief Mechanical Officer that the bulletins were improper inasmuch as they failed to comply with the contract provision requiring 5 days advance notice. Thereafter, Carrier cancelled these bulletins and on October 13, 1972 rebulletined the positions with the new starting times of the shifts. The Organization protested Carrier's change in the starting time of the shifts in question averring that Carrier has changed the starting times thereof without reaching mutual agreement with it as required by Rule 8(a), (b) and (c).

The Organization has raised the issue that Carrier violated Rule 28(a), relative to Time Limits, when it failed to render a decision in writing within 60 days of its claim letter of November 9, 1972. Carrier maintains that it has complied therewith when, after meeting with the Organization's General Chairman on December 28, Carrier's Chief Mechanical Officer denied the claim by letter of December 29, 1972. While the Organization maintains that Carrier's letter of December 29 did not relate to its claim letter of November 9, but to its letter of November 6, there is no indication in the record that Carrier did not intend to deny the claim when it sent the General Chairman this letter of declination. The Board thereby concludes that Carrier has, in fact complied with the 60 day time limit and thus the claim is not procedurally defective.

The Organization strenuously argues that when Carrier changed the starting times of the first and second shift and the relief position with the first shift commencing prior to 6:00 A.M., this violated Rule 8(a), (b) and (c) of the Agreement since Carrier failed to mutually agree to this change with the Organization. If the Bayhead Engine Terminal were a Main Shop or an Engine House, then Rule 8(a) would preclude Carrier from starting a shift prior to 6:00 A.M. unless the Organization agreed. However, Carrier contends that this Terminal is not a Main Shop or an Engine House and thus Rule 8(d) applies. Since there does not appear to be evidence in the record rebutting Carrier's allegation in this regard we must therefore conclude that Rule 8(d) is applicable to the claim at hand.

Rule 8(d) provides that shift starting times shall depend on the requirements of Carrier's service, subject to mutual agreement by the parties. Rules similar to 8(d) have been interpreted by this Board so as to require the parties to confer in good faith in a sincere attempt to reach a mutual agreement. A mere token effort will not suffice. However, once having so conferred, if the parties are unable to reach a mutual understanding, then Carrier may proceed to implement the proposed changes.

While the Organization alleges that Carrier made no good faith effort to effect a mutual agreement on the starting time changes the record does not support this allegation.

General Chairman Leshik met with Mr. Cocchiola, Carrier's Manager of Passenger Equipment, on October 12 and then on December 28 he met with Mr. Wright, Carrier's Chief Mechanical Officer relative to the changes in starting times. And while the latter meeting was held subsequent to implementation of the changes, there is no evidence to indicate that Carrier was not amenable to rebulletining the positions if the parties could mutually agree. When Carrier met with the General Chairman on October 12 and December 28 it complied with the requirements of Rule 8(d). However, when these conferences then failed to result in mutual agreement it was Carrier's prerogative to institute its proposed changes. Furthermore, we are unable to find contractual support for the Organization's contention that Carrier is precluded from establishing shifts that lap, and from establishing a shift that has two different starting times. This Board can therefore find no Agreement support for the claim and it must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February, 1975.