

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: { International Association of Machinists
{ and Aerospace Workers, AFL-CIO
{
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Improperly abolished all positions of Machinists, Wheel Press Operators (Helpers), and Machinist Helpers in the Wheel Shop at Clinton, Iowa, which positions were assigned to work Monday through Friday, and established positions on a staggered work week basis, extending over a period of seven days per week, effective August 31, 1973.
2. That all employees assigned a work week other than Monday through Friday be paid eight hours at pro rata rate for each day not worked during the Monday through Friday work week commencing with August 31, 1973.
3. All employees assigned a work week other than from Monday through Friday be paid at time and one-half rate for work performed on Saturdays and Sundays, except that an employee assigned to work on Saturdays and Sundays be paid at double time rate for work performed on Sundays commencing with August 31, 1973.

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 were given due notice of hearing thereon.

Since 1957 Carrier has operated at Clinton, Iowa a Wheel Shop which produces wheels for use in rip tracks and car shops around its system. The record shows that production demand increased and Carrier added a third shift Monday through Friday in 1971. Thereafter, in August 1973 Carrier changed from a five-day to a seven day operation in the Clinton Wheel Shop. In making this shift Carrier increased the number of shifts from 15 to 17 with service round-

the-clock on Monday through Friday and on the first shift Saturday and Sunday. To affectuate this change Carrier hired some 15 additional machinists and helpers and staggered the work weeks for many employees, including some 16 named Claimants herein. Prior to the change Claimants had an assigned work week of Monday through Friday, rest days Saturday and Sunday. Thereafter, those employees assigned to the regular Saturday and Sunday shifts were assigned rest days of Sunday and Monday, Monday and Tuesday, Tuesday and Wednesday, Wednesday and Thursday, Thursday and Friday, or Friday and Saturday. On October 12, 1973 the Organization filed the instant claim alleging that Carrier violated Rule 1 $\frac{1}{2}$, Rule 6 and Rule 7 of the controlling Agreement and seeking eight (8) hours pro rata for each day Monday through Friday not worked by the Claimants since August 31, 1973 and time and one-half or double-time, respectively, for each Saturday and Sunday worked since that date.

This is another in a long series of cases involving the 40-Hour Work Week Agreement and five-day to seven-day operations thereunder. Carrier in handling on the property and before the Board pointed to an expanding demand for wheels as creating a necessity for a seven-day per week operation. The Organization on the property essentially argued that practice and tradition required continuation of the five day operation and that there was no necessity for moving to a seven-day operation and that Carrier should have enlarged the shop and facilities rather than going to a seven-day operation. The Organization further argued in our hearing Carrier should equalize shifts and/or work Saturday and Sunday overtime as necessary for productions.

We have studied carefully the many Awards cited by each of the parties herein. For the most part the Awards cited by Petitioner go to procedural deficiencies and/or violation of Circular No. 1 in the presentation of evidence de novo before our Board. Our review of the record persuades us that these authorities are without relevance in this case. Regarding the merits of the claim we find denial Award 18328 (Third Division) to be parallel in many respects to the case before us herein and we quote approvingly therefrom as follows:

"The question before us is whether or not the Carrier had the right to establish the seven-day positions herein contested.

It is the Organization's position that the work could have been done during the regular five-day schedule which prevailed before the changes.

* * * * *

Award 5555 (Carter) said:

' . . . The burden rests upon the Employees to show in order to maintain their claim, that the duties of claimants' positions could reasonably be met in five days. This burden has not been met in the record here present.'

Award 10622 said:

'The determination of the number of employees needed to perform its work is the function of Management except as it has limited itself by Agreement.'

We cannot find from study of this record that the Organization supplied sufficient evidence to sustain its position.

The Organization also raises the question of unilateral action by the Carrier in violation of Rule 1 (f) which it contends requires consultation before the establishment of these positions. However, Award 17031 (House) holds, on an almost identical rule, to the contrary."

Another persuasive authority with which we concur herein is Award 18504 (Third Division) wherein it was stated:

"Carrier did not make a detailed explanation of its problems during the handling on the property, though it did mention them as the reason for the change. It might have been better advised to relate the facts, both for the Organization's information in handling the matter on the property and for consideration of this Board.

It did elaborate on its position in the presentation to us, and the Organization replied. The situation as described convinces us that the Carrier did, in fact, properly exercise its managerial prerogative through approaching an operation problem that existed by establishment of 7-day positions. We find the action met the test imposed by the Agreement; that a sufficient problem existed to justify the action."

Finally, the Organization asserts that Carrier violated Rule 1 (f) by unilaterally rebulletining these positions without consultation or prior discussion with the Organization. We observe that the record is contested relative to whether Carrier did in fact give the Organization prior notice but in any event the positions here involved did not deal only with a shift to Tuesday through Saturday work. See Award 17031 (Third, Supplemental) and Cf our own recent Award 6709. Based upon the whole record we are constrained to deny the claim.

A W A R D

Claim denied.

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Award No. 7066
Docket No. 6831
2-C&NW-MA-'76

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 11th day of June, 1976.