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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7947
Docket No. 7907
2-CR-EW-'79

JUN 4 1979

J. W. GOHMANN

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
 (Department, A. F. of L. - C. I. O.
 ((Electrical Workers)
 (Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the current Agreement when they, effective February 1, 1977 at their Repair Facility, Reading, Pennsylvania, discontinued the eight (8) consecutive hours shift including an allowance of twenty (20) minutes for lunch pay within the limits of the fifth (5th) hour.
2. That, accordingly, the Carrier be ordered to reimburse each Electrical Worker so assigned at the facility for twenty (20) minutes pay for each day so assigned, until the violation is discontinued.
3. That, accordingly, the Carrier be ordered to compensate each Electrical Worker six percent (6%) on the monies due them, compounded on all dates subsequent to February 1, 1977.

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.

At issue here is the proper application of rules governing lunch periods and pay therefor, as follows:

"RULE 2

One Shift

At the main shops and engine houses where one shift is employed, the starting time shall not be earlier than 7:00 A.M. or later than 8:00 A.M., unless otherwise agreed

"upon. The time and length of lunch period, without pay, shall be subject to mutual agreement."

"RULE 3

Two Shifts

At the main shops and engine houses where two shifts are employed, the starting time of the first shift shall be governed by Rule 2, and the second shift shall start not later than 8:00 P.M.

The spread of each shift shall consist of eight consecutive hours, excluding the lunch period, the length of which shall be subject to mutual agreement and shall not be paid for."

"RULE 4

Three Shifts

At the main shops and engine houses where three shifts are employed, the starting time of the first shift shall be governed by Rule 2, and the starting time for each following shift shall be regulated accordingly. The spread of each shift shall consist of eight consecutive hours, including an allowance of twenty minutes for lunch with pay within the limits of the fifth hour."

Prior to April 1, 1976, the former Reading Railroad operated two shop areas in Reading -- one generally designated as the enginehouse area and the other as the car shop area. The Reading Railroad became part of the Consolidated Rail Corporation (the "Carrier"), and these two maintenance areas came under the supervision of a General Superintendent. The enginehouse area operated and continues to operate on a three-shift basis, while the car shop area operated and continues to operate on a one or two-shift basis.

On April 1, 1976, the new General Superintendent changed the meal arrangement so that employees in the car shop area received a 20-minute paid meal period instead of a 30-minute non-paid meal period as was true previously.

After notification to and consultation with the Organization (and other organizations representing other crafts), the Carrier went back to its former arrangement by placing car shop area employees on a 30-minute non-paid meal period.

The Organization argues that the 20-minute paid lunch period is proper, since the changes of April 1, 1976, created a single area, under one General Superintendent, with the provisions of Rule 4 applicable to all employees.

The Board finds the Organization does not have solid basis for its claim, and that reversion by the Carrier to the lunch period arrangement prior to April 1, 1976, has foundation in the Agreement, absent changes in working schedules from a one or two-shift arrangement to a three-shift arrangement.

The Organization has failed to show that the car shop area and the enginehouse area have been somehow commingled or that there are any actual changes in work arrangements upon acquisition of the facilities by the Carrier. On this basis, there is no mandate under Rule 4 to require the Carrier to place Car Shop employes on a 20-minute paid lunch period.

It is patently true that the General Superintendent did make such a change, which was in effect from April 1, 1976, to February 1, 1977. There was, however, no requirement under the Agreement between the parties for this change, and it was not undertaken by joint consultation and agreement between representatives of the Carrier and Organization empowered to make such changes. Many awards of the Board have substantiated that a practice, even where instigated by a supervisor, cannot defeat the clear language of the Agreement. As one example, Third Division Award No. 20323 (Sickles), dealing with a different benefit provision, states in part:

"The fact that certain Carrier Officials may have incorrectly stated an entitlement to premium pay does not, in the view of the Board, bind the Carrier under the facts and circumstances of this record, ..."

The acquisition of the Reading Railroad by a new owner and the installation of a common supervisory official over several functions does not disturb the degree of pre-existing benefit entitlements to the affected employes. Nor are the applicable Rules modified in their meaning and applicability by the unilateral and temporary decision of a Carrier official.

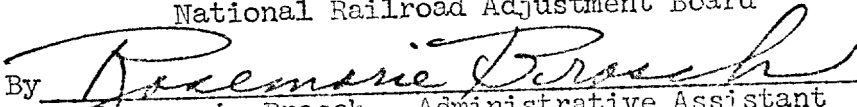
Having reached this conclusion, the Board need not concern itself with the Carrier's argument in this dispute that the Organization failed to provide the names of specific grievants.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of May, 1979.