

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Fruit Growers Express Company

Dispute: Claim of Employees:

1. That the Fruit Growers Express Company violated the controlling agreement when they established a three-shift operation in their Alexandria Car Building Shop, and failed to assign the first shift employees to eight consecutive hours including allowance of 20 minutes for lunch.
2. That accordingly, the Fruit Growers Express Company be ordered to compensate all first shift employees in the amount of 20 minutes pay each at the pro rata rate for each day the three-shift operation was in effect.

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 employees 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 issue in this case primarily involves Rule 5 of the pertinent Agreement which states:

"Where three shifts are employed, starting time of first shift shall be governed by Rule 3, and starting time of each of the other shifts shall be regulated accordingly. Each shift shall consist of eight (8) consecutive hours including allowance of twenty minutes for lunch within the limits of the fifth hour."

The Employes contend that the Carrier violated Rule 5 when the Carrier, in their opinion established a third shift operation in the car building shop of the Carrier's Alexandria, Virginia, shop and subsequently failed to schedule the first shift employees for 8 consecutive hours including an allowance of 20 minutes for lunch.

After carefully considering the respective arguments, it is the conclusion of the Board that there is insufficient evidence to sustain the claim, and therefore,

it must be denied. The Board is not convinced and it cannot be concluded that the Organization fulfilled their burden of factually showing that "three shifts were employed" within the meaning of the Rule. The Carrier has asserted, and it has not been denied on the property during the handling of the claim, that only a few employees were employed on the third shift in the underframe shop and not the shop in general. Moreover, we note that the addition of these few employees began September 11, 1978 and ended November 4, 1978. The Organization argues that even though there may have been a limited number of employees assigned to the third shift during this period, it does not relieve the Employer of its obligation under Rule 5. The Board disagrees. While it is recognized that some employees were assigned during hours known as the third shift, the better reasoned interpretation of Rule 5 is one which would require that more than a "few" employees for more than, what in this case was, a temporary period be employed before it can be concluded "three shifts are employed". To have prevailed in this case, the Organization would have had to show more substantial, persuasive and permanent work activities on the third shift to properly invoke Rule 5. Because of the small number of employees, the short time involved and the limited nature of the work involved, it is our conclusion that three shifts were not employed. There seems to have been no comparison or similarity in scope of the assignments during the hours of third shift assignments and those on the first and second shifts. There would have to be more similarity to show a violation of Rule 5.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of July, 1982.