

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10465
Docket No. 9586
2-N&W-CM-'85

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement of September 1, 1948, as subsequently amended, when on February 16, 1980, Carmen W. J. Marnati, D. E. Manning and Z. J. Jacobs were assigned jobs at Portlock, Virginia, with working hours, 6:00 A.M. to 2:00 P.M.
2. That the Norfolk and Western Railway Company did violate the Rules of the Current Agreement, particularly Rules 2, 4, 7 and 120, when on February 16, 1980, Management created a four (4) shift operation at Portlock, Virginia.
3. That the Norfolk and Western Railway Company did not properly compensate Railway Carmen W. J. Marnati, D. E. Manning and Z. J. Jacobs for the time they were required to work in advance of the legal starting time of the first shift, at Portlock, Virginia.
4. That because of such violation and capricious actions, the Norfolk and Western Railway Company be ordered to compensate Carmen W. J. Marnati, D. E. Manning and Z. J. Jacobs, four (4) hours at the pro rata rate of pay for each day they are required to work in advance of the legal starting time of their shift at Portlock, Virginia.

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 employes 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.

It was Carrier's position that in order to insure the proper inspection and repairs of freight cars at the Portlock Yard TOFC Ramp, it was necessary to assign two positions to begin work at 6:00 A.M., effective February 16, 1980. Previously, the involved work was performed by forces on the first shift starting at 7:00 A.M. Carrier asserts this change was implemented in accordance with Agreement Rule 5, specifically the second sentence of the first paragraph thereon, which reads as follows:

"RULE NO. 5 - Exception to Rules 2, 3 and 4

"When starting a shift under the provisions of Rules 2 and 3 would necessitate the use of an otherwise unnecessary additional shift, the normal starting time may be departed from. The starting time of one or a small group of men may be changed from the established starting time where it is found necessary to meet conditions requiring such a change."

It contends its forces on the third shift were insufficient to perform the work required by the changed operational conditions and thus, it was necessary to change the starting of a small group of men.

The Organization argues that Carrier's actions violated the Controlling Agreement since the change in shift time permitted under Rule 5 relates only to one or two shift operations and not to three shift assignments. It asserts that Rule 5 cannot be construed to allow Carrier the right to establish a four shift operation under the guise of operational necessity since the language of the first paragraph permits exceptions to shift assignments under Rules 2 and 3. It avers that in view of this breach, the affected employees are entitled to call compensation consistent with the requirements of Rule 7. It cited several Second Division cases to support its claim, including Award Nos. 786 and 7213.

In reviewing this case, we agree in part with the Organization's position. While Rule 5 provides for exceptions to Rules 2, 3 and 5, the first paragraph of this provision distinctly relates changes in starting time to one and two shift operations. The first sentence of this paragraph provides the rationale to depart from the normal shift starting time and the second sentence indicates that it can be effectuated for one or a small number of employees. The two sentences in the first paragraph must be read as a whole and as applicable to one or two shift operations. To be sure there is an exception to Rule 4 provided by Rule 5, but it is spelled out in the third paragraph which is totally unrelated to the changes contested herein. In effect, there was no permissible authority under Rule 5 for Carrier to change the Claimants' starting time. It violated the Agreement.

As to the correlative question of compensatory liability, the Board finds no Agreement support to sustain the monetary portion of the claim. Second Division Award No. 786 is indeed persuasive that Carrier cannot, in the face of clear rule language, change the starting time of an employee's shift and the employer directed in that instance to abolish an impermissibly established fourth shift.

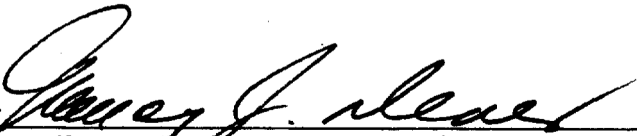
In Second Division Award No. 7213 which the Organization relies on to support monetary damages herein, the Board premised its monetary award on the Road Service Rule in that Agreement. The application of an overtime call rule was not cited by the Claimant in that dispute nor considered by the Board in reaching its decision. Rather a nexus was established between the Road Service Rule (Rule 113) and the efficacy of the monetary claim sought. In view of this nexus, which is not present here, Award No. 7213 is not controlling. Accordingly, in the absence of clear, indisputable showing that Rule 7 applies in this case, we are compelled to deny the monetary claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1985.