

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
(Southern Pacific Transportation Company
((Eastern Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rule 2, and the Agreement of August 22, 1963 (page 118 of the controlling agreement) when by bulletin dated August 7, 1981 they changed Carman E. Walker's assigned hours from 8:00 a.m. to 3:00 p.m., rest days Sunday and Monday to 2:00 a.m. to 10:00 a.m. rest days Sunday and Monday, without agreement being reached between the local officers and local committee, Gliden (sic), Texas.
2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carman E. Walker at the time and one-half rate of pay for each day worked on this bulletin between the starting time and the starting time of his regular assignment as of August 14, 1981 as well as straight time rate of pay for being held away from his regular assignment. This will constitute a continuing time claim until correction is made in line with the agreement.

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.

By bulletin, dated August 7, 1981, Carrier abolished five (5) positions at Glidden, Texas and bulletined one (1) new position with assigned hours 2:00 A.M. to 10:00 A.M. Claimant was the only remaining Carman at this location and accordingly was assigned to this position. The Organization asserted this action violated Rule 2 of the Schedule Agreement and also Special Agreement No. 3 of August 22, 1963; and filed a claim on August 23, 1981.

In its petition, the Organization charged that Carrier failed to comply with the explicit steps of Rule 2, which, in essence, requires that the starting time of each shift at any point shall be arranged by agreement based on joint checks of actual service requirements. It also argued that Carrier failed to observe the August 22, 1963 local agreement which requires that agreed upon changes in starting time be done in writing and jointly subscribed by each party. It maintained that Carrier was precluded from bypassing the Local Committee in changing the starting time of shifts; and cited Second Division Award No. 2722 as controlling authority. Both Rule 2 and the August 22, 1963 Agreement are referenced as follows:

Rule 2 - Starting Time

"The number of shifts and the starting time of each shift at any point, shall be arranged by agreement between local officers and employees' Local Committee, based on joint check of actual service requirements, subject to approval by Management and General Committee."

Agreement of August 22, 1963

"At our conference today, we discussed the above-captioned case, listed as No. 37 in BRCOFA Docket of July 25, 1963: It was agreed that this case would be disposed of on the basis that when the Local Committee and Local Supervision reach agreement concerning the changing of starting times, it must be done in writing and jointly subscribed by each party."

In defense of its actions, Carrier argued that it was compelled to reduce forces at Glidden, Texas, because of a decline in business activity. It contended it needed a Carman at a time when work was to be performed and thus, it was necessary to rebulletin the position for the 2:00 A.M. to 10:00 A.M. shift. It averred that it had the right to determine what positions were required to insure the efficiency of operations and asserted it acted in accordance with its inherent managerial prerogatives. It noted that Claimant did not suffer any monetary loss as a result of the change in shift time and challenged his entitlement to additional compensation.

In our review of this case we agree with the Organization's position. While Carrier is correct that it has the right to determine staffing needs, this right is not absolutely unrestricted. Under the circumstances of its retrenchment actions in 1981, it was not barred from reducing forces subject to the limitations posed by the applicable Collective Agreement, but these limitations are not before us. Rather, the applicability of Rule 2 and the August 22, 1963 Agreement is at issue.

Based on the evidence of record, we find no restrictions or agreement qualifications that would permit Carrier to by-pass the implementing requirements of Rule 2. It was required to obtain the agreement of the Organization's Local Committee as an indispensable condition of determining or changing the starting time of shifts. This requirement was not implicitly mooted by the exigencies of the moment or by some unwritten perception that a contract provision can be overlooked when the economic environment negatively changes.

In view of Carrier's actions, we find that Carrier violated Rule 2 and the August 22, 1963 Agreement. However, because Claimant was furloughed on September 25, 1981, the monetary portion of the claim shall be sustained from August 14, 1981 through September 25, 1981.

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 7th day of August 1985.