

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 2 of the controlling Agreement when they failed to permit Painter DeLeon to leave his assignment to go home at 3:00 P.M. This work was the job Painter DeLeon had worked for many years and was permitted to leave at 3:00 P.M. for many years.

2. That the Missouri Pacific Railroad Company be ordered to compensate Painter DeLeon thirty minutes per day starting June 1 and 2, 1983 and continuing until violation is corrected.

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.

Claimant is employed by the Carrier at its Settegast Yard in Houston, Texas. On June 1, 1983, the Carrier did not allow the Claimant to leave his assignment to go home at 3 P.M. The Organization thereafter filed a Claim on the Claimant's behalf, seeking thirty minutes' compensation per day from June 1, 1983, until the alleged violation is corrected.

The Organization contends that the Carrier violated Rule 2(c)-(d) and changed past practice when it altered the hours that the Claimant works. Rule 2(c)-(d) provides:

"(c) Where one and two shifts are employed, the time of the lunch period will be within the beginning of the fourth and ending of the sixth hour and the length of the lunch period will be subject to mutual agreement, but will not be less than thirty minutes nor more than one hour. The

lunch period under this rule will not be paid for unless worked.

(d) Where three shifts are employed, the starting time of the first shift will not be earlier than 7:00 A.M. nor later than 8:00 A.M., and the starting time of the other shifts will be regulated accordingly. Each shift will work straight through and will be allowed not to exceed twenty minutes for lunch between the beginning of the fourth and ending of the sixth hours with pay. This applies only to employees working on running repairs in engine houses and train yard forces."

The Organization contends that the Claimant works at the Diesel Shop, which operates under a three-shift schedule. The Organization points out that in declining the Claim, the Carrier's Master Mechanic admitted that the Claimant works at the Diesel Shop.

The Organization further asserts that the Claimant's job classification has operated at Settegast Yard under a three-shift schedule for several years; Carrier's refusal to allow Claimant to leave at 3 P.M. changed past practice. The Organization therefore contends that the Claim should be sustained.

The Carrier contends that the Claimant holds a regular assignment that is bulletined to work until 3:30 P.M.; the Carrier therefore expects the Claimant to actually work until 3:30 P.M. The Carrier asserts that there is no basis for the Organization's argument that when the Claimant is sent to the Diesel Shop, he assumes the assigned hours and lunch period of the assigned Diesel Shop employees. Rule 7 does not contain any language that permits an employee to deviate from his or her assigned hours.

The Carrier points out that if the Claimant takes only a twenty-minute lunch when he is assigned to the Diesel Shop, he does so of his own volition; Carrier officials have never told Claimant that he must take less than his assigned thirty minutes for lunch. The Carrier argues that the Claimant's desire to deviate from his assigned hours when at a different work location is a matter for the discretion of the Claimant's Supervisor.

In addition, the Carrier denies that past practice supports this Claim. There has not been such a practice on the property, nor has the Organization presented any evidence of this type of past practice. The Carrier further asserts that even if there were evidence of such past practice, this Board has held that no amount of past practice can supersede clear, unequivocal rules and the Carrier's right to manage employees and schedule work in any manner it determines to be efficient.

The Carrier also points out that the Claimant was not disciplined when he was observed leaving work thirty minutes early. Instead, the Claimant was notified that in the future, he was expected to complete his assigned work hours. The Carrier argues that even if the past practice alleged by the Organization did exist, this was due notice that the practice was ended and the Claimant was to work until 3:30 P.M.

Finally, the Carrier asserts that there is no basis for the money damages sought by the Claimant. There is no instance when the Claimant has not been allowed eight hours' pay for eight hours' work. The Claim for an additional thirty minutes' pay represents a Claim for more than eight hours' pay for eight hours' work. The Carrier therefore contends that the Claim should be dismissed in its entirety.

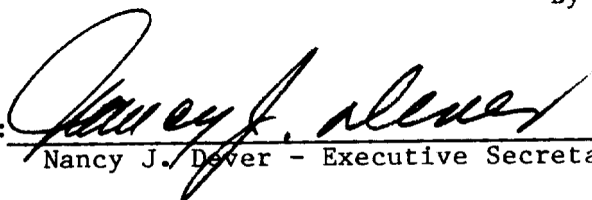
This Board has reviewed the evidence and relevant Agreements in this case, and it finds that the Claimant holds title to a regular assignment which is bulletined to work from 7 A.M. to 3:30 P.M. It has always been the position of this Board that a past practice, even if proven, is not controlling where the Agreement is clear and unambiguous. See Second Division Award 8554. Since there is no dispute that the Claimant's job is bulletined to end at 3:30 P.M. each day, the fact that the Carrier allowed him to leave at 3 P.M. for a long period of time does not constitute a past practice requiring that he be allowed to leave at 3 P.M. in perpetuity. No amount of past practice may take the place of a clear and unequivocal Rule. In this case, the Rule was clear.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.