

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad (SCL) violated the Current Working Agreement, particularly Rules 1(a) through 1(m) Rule 2, and Rule 11, when Carrier changed the hours of service without regard for employees shift hours, lunch period, or days off, starting July 16, 1982 at St. Petersburg, Florida.

2. That accordingly, the Seaboard System Railroad Company (SCL) compensate the following Employees on first shift thirty (30) minutes at overtime rate for each day worked from July 16, 1982 until corrected. D. R. Hubbard, W. A. Rydberg, A. R. Batten, G. Espeland, L. A. Perry, and R. D. Mann. The following Employees on second shift (1) hour at overtime rate for each day worked from July 16, 1982 until corrected. J. R. Patrick, J. R. Hope, W. Mohr, and D. L. Mason. The following Employee assigned to job #402 of bulletin MM-217-A be paid at a rate of time and one-half for the first day of this new assignment, L. A. Perry.

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.

The record indicates that the Carrier decided to rearrange its forces at its St. Petersburg Shop. There is no dispute that for over thirty years employees had worked an eight hour shift which included a 20 minute paid lunch period. They had worked three shifts from 7 A.M.-3 P.M.; 3 P.M.-11 P.M. and from 11 P.M.-7 A.M.

On April 22, 1982, the Carrier met with the Representatives of the Organization involved and proposed changes. Under Rule 2 which states that "the time and length of the lunch period shall be arranged by mutual agreement," the Carrier suggested a new arrangement. The third shift forces would be eliminated; the first and second shifts would be extended thirty minutes (7 a.m.- 3:30 p.m.; 3:30 p.m.-midnight), with a thirty (30) minutes unpaid lunch. The twenty minute paid lunch would no longer be allowed. The Organization did not agree. Further meetings were held on May 13 and May 20, 1982. After no Agreement was reached, the Carrier unilaterally initiated the changes.

The Organization filed a time Claim on September 30, 1982, and argued that the Carrier had violated Rule 1 (Hours of Service) when it changed the employees' working hours. It requested compensation in that employees were required to work overtime into the next shift without appropriate compensation. It further argued that the Carrier violated Rule 2 (Assignment of Shifts) when it changed the lunch period without "mutual agreement" and Rule 11 (Changing Shifts) when an employee was forced to change shifts without bid or request and not paid the overtime rate as per the Agreement. The Organization on property notes that the Carrier has failed to provide evidence to justify its change (Second Division Award 6480) and that the third shift was never eliminated.

The Carrier points out that changes in its operations were necessitated by numerous factors. In its letter of September 24, 1982, the Carrier notes the need for increased manpower on the first and second shifts to maintain Amtrak's new equipment; the need for increased production which would be attained by eliminating the twenty minutes paid lunch and efficiently utilizing the thirty minute unpaid lunch period; and the need to decrease absenteeism which had been a third shift problem. The Carrier argues that the lack of "mutual agreement" was created by the Organization's failure to agree for reasons which were not "supported by the current controlling agreement..." The Carrier points out that Awards on the same property permit such changes when the Organization fails to agree (Second Division Award 6691, 7830). It further argues that the only Electrician remaining on the third shift was established under a Rule 2 exception and "is the only person on duty and available to properly inspect and maintain the electrical standby requirements of the Amtrak passenger equipment." As for its lack of evidentiary support, the Carrier states that it provided the Organization with clear evidence of the need for changes. As the Carrier states:

"It is our position that the Organization representatives could not properly refuse to cooperate when the requirements of service and operating problems were clearly explained as they were in this case."

Our review indicates that unlike Second Division Award 6480, where only an assertion of the "operational needs" was stated by the Carrier, the instant case goes beyond assertion into depth and detail. Sufficient probative evidence exists that changes were required which were not rebutted by the

Organization (including prior force reductions and lost productivity). In the instant case the Carrier made a reasonable effort to effect change. Three different meetings were held without evidence of progress. Consistent with past Awards, this Board holds that the failure to achieve "mutual agreement" in the instant circumstances, does not preclude Carrier from putting changes into effect and may not be used as a veto when Agreement is not reached (Second Division Awards 1320, 1798, 5990). As such, the failure to achieve Agreement on the time and length of lunch in the case at bar cannot be construed as fatal to the Carrier. With regard to the Organization Claim that the hours of service Rule has been violated by changing the lunch period, the Board finds no such evidence and therefore denies compensation for working overtime into the hours of the old shift. As for the Claimant assigned to Job #402, that move was the direct result of the Carrier's operational changes. Nevertheless, although the Claimant was assigned a shift and signed the "request" under protest, the request was made and no violation occurred. This is consistent with Second Division Award 10819, under similar language and circumstances.


In the whole of this case, following both prior Awards and the record as was developed on property, we must deny these Claims.

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 29th day of April 1987.