

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11277
Docket No. 11110
2-B&M-CM-'87

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Boston and Maine Corporation

Dispute: Claim of Employees:

1. That the Boston and Maine Corporation, hereinafter referred to as the Carrier, violated the provisions of the controlling agreement, namely Rule 2, Paragraph (a) and (b) thereof, beginning on October 22, 1982, when they arbitrarily changed the starting and quitting time of the carman's position employed at the piggyback-container facility at Boston Yard No. 7, Boston, Massachusetts.

2. That accordingly, Carrier be ordered to additionally compensate Carman M. J. Lennon, hereinafter referred to as the Claimant, one (1) hour at the carman's time and one-half rate of pay for each day worked beginning on October 22, 1982 and for each day thereafter as long as this violation continued to remain 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 employee or employees involved in this dispute are respectively carrier and employees 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.

On October 21, 1982, the Claimant's old position was abolished which carried the hours of 7:00 A.M. to 4:00 P.M., and a new position was established with the hours of 6:00 A.M. to 3:00 P.M. with lunch at Noon. Both positions had the same days off. This change took place at the Carrier's container facility at their Boston, Massachusetts, Yard #7.

The Organization claimed a violation of Rule 2, which is reproduced as follows:

"(a) There may be one, two, or three shifts employed. The starting time of any shift shall be arranged by mutual understanding between the local officers and the employees' committee based on actual service requirements.

(b) The time and length of the lunch period shall be subject to mutual agreement.

Note: In the application of the foregoing paragraphs it is understood that if an understanding is not reached at conference the change proposed by the Company will become effective and thereafter any issues may be appealed as a grievance under Rule 29.

(c) Where two shifts are employed, the spread of the second shift shall consist of eight (8) consecutive hours, including an allowance of twenty (20) minutes for lunch within the limits of the fifth hour.

(d) Where three shifts are employed, the spread of each shift shall consist of eight (8) consecutive hours, including an allowance of twenty (20) minutes for lunch within the limits of the fifth hour."

The Organization argued the change was not agreed to by the Local Committee as per the Rule. The Claimant was forced to work six hours before taking his lunch. Lunchtime and length of time are to be by mutual agreement. The Organization noted there is a past practice, and the Carrier has no right to unilaterally change. Finally, the Organization asserted a time limit violation.

The Carrier stated the Claimant's time was not changed arbitrarily. The Carman is employed at the facility to assist a contractor and also a customs agent on the property. Change in time was done to coordinate the Claimant's starting time and lunch with the contractor and customs agent and, therefore, to avoid productivity loss. The Carrier claimed its Manager attempted to have discussions with the Local Chairman as provided for in Rule 2(b), and the Carrier implemented the change in accordance with the Note attached to Rule 2(b).

Upon complete review of the evidence, the Board finds that the threshold argument regarding time limits by the Organization was not made in a timely fashion and therefore will be dismissed. With respect to the merits of the case, the Carrier claimed it had sound business reasons for making this change. The Board notes that there was a substantial loss of productivity due to the original scheduling. The question remains, did the Carrier comply with

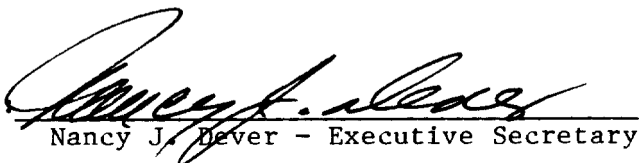
the language contained in Rules 2(a) and (b). The record indicates that they have at least met the minimum requirements. The Board must then determine whether or not the change was made in an arbitrary and capricious manner or for sound business reasons, and the Board finds that the latter is the case. Therefore, the Claim will be denied.

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 10th day of June 1987.