

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12915
Docket No. 12794
95-2-93-2-158

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen
(and Oilers
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

"1. That under the current and controlling agreement the below listed nine (9) Firemen & Oilers have been denied proper compensation since June 29, 1992:

D. Scott	174399	T. L. Lewis	174415
J. T. Wilkerson	140039	M. L. Ellis	155034
S. R. Carpernter	17435	G. K. Ponsell	172020
T. E. Kimbrell	174604	J. A. Brown	170454
M. B. Monroe	165208		

2. That accordingly, the above named nine (9) Firemen & Oilers be compensated one (1) hour at pro rata rate each and every day they have been required to stay until 3:30 PM in violation of the current and controlling 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 employee or employees involved in this dispute are respectively carrier and employee 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.

This claim involves the contention that in violation of Rule 3(c) the Carrier failed to change the assigned shift hours of the Claimants, i.e., 7:00 A.M. to 3:30 P.M., to 7:00 A.M. to 3:00 P.M. when, on June 29, 1992, the Carrier commenced a new operation for the inspection of locomotives at the Back Shop in Waycross, Georgia. Known as the "standard line," the new operation was scheduled to operate continuously, three shifts per day, with a 20-minute paid lunch period.

A total of 60 mechanics represented by the Shop Craft unions, together with four Laborers represented by the Organization here in dispute, were assigned to work on the standard line. The mechanics were somewhat equally assigned to work on all three shifts. Laborers were assigned to two of the three shifts of this standard line, namely, two Laborers from 3:00 P.M. to 11:00 P.M., and two from 11:00 P.M. to 7:00 A.M. No Laborers were assigned to work from 7:00 A.M. to 3:00 P.M., or the first shift.

The Claimants in this dispute held positions in the Back Shop prior to the establishment of the standard line operation, and continued working thereafter in such assignments, 7:00 A.M. to 3:30 P.M., with an unpaid 30-minute lunch period. They were assigned to the Fallout Shop (4), Engine Rebuild Shop (2), Tank Shed Shop (1), and Tin Shop (1). The Back Shop also includes the following shop or work areas: load box, truck, main generator, machine shop/ tool room, blacksmith, paint, combo, facility maintenance, vehicle maintenance, and shop watchmen. In addition to the Back Shop, the Carrier also operates, separately, both a Car and Locomotive Shop at the location here in dispute, Waycross, Georgia.

Employees represented by the Organization, as with mechanics represented by the various Shop Craft unions, are on a seniority roster which entitles them to bid or hold positions at any of the separate shop facilities.

It is the position of the Organization that when the Carrier established the standard line it changed its mode of operations in the Back Shop facility from a one to a three shift operation and that such action triggered different contractual language governing the assignment of shifts. It claims that whereas Rule 3(a) was applicable to the one-shift operation, Rule 3(c) became applicable with the three-shift operation, with each shift to consist of eight consecutive hours including an allowance of twenty minutes for lunch within the fifth hour.

Rule 3, Assignment of Shifts, reads as follows:

- " (a) When one shift is employed, the starting time shall be 7:00 a.m. local time, or as may be agreed upon at any shop by the Company and employees covered by this agreement. The time and length of the lunch period shall be arranged by mutual agreement.
- (b) Where two shifts are employed, the starting time of the first shift shall be governed by item (a) of this rule, and the second shift shall start immediately following the close of the first shift or as may be agreed upon at any shop by the Company and employees covered by this agreement. The time and length of the lunch period shall be arranged by mutual agreement.
- (c) Where three shifts are employed, the starting time of the first shift shall be governed by item (a) of this rule, and the starting time of each of the other shifts shall be regulated accordingly. Each shift shall consist of eight consecutive hours including an allowance of twenty minutes for lunch within the limits of the fifth hour.

The time established for commencing and quitting work for all men on each shift in either the Car or Locomotive Department shall be the same at the respective points but where three shifts are worked by running repair forces and two shifts by back shop forces, the quitting time of the first shift and the commencing and quitting time of the back shop force will be governed by the provisions of item (b) of this rule.

(Exception: It is agreed that three eight hour shifts may be established under the provisions of item (c) of this rule for the employees necessary to the continuous operation of power houses, mill wright gangs, heat treating plants, train yards, running repair and inspection forces, without extending the provisions of item (c) of this rule to the balance of shop forces.)"

The Organization contends that the nature of all duties in the entire Back Shop facility are the same or similar, and since all the employees are under the supervision of the same Plant Manager, that the Claimants should not have been excluded from application of Rule 3(c). It says that the Claimants should have been recognized as a part of the first shift of the workforce assigned to the Back Shop, and that they are therefore entitled to one hour each at the pro rata rate of pay for each day that they were required to stay the additional time, or until 3:30 P.M., beginning June 29, 1992.

Contrary to the position of the Organization, the Carrier asserts that Rule 3 does not support the claim. Further, the Carrier says that even if it was to be assumed, arguendo, that Rule 3 had application, and Laborers were to be assigned to all three shifts of the standard line operation, that the Exception to Rule 3, *supra*, permits the operation of three eight-hour shifts for inspection forces without extending the provisions of Rule 3(c) to the balance of the shop force.

The Carrier also says that the claim for overtime payment is not supported by any Agreement Rule under the theory advanced. It says that none of the Claimants worked during their 30-minute meal period, nor did they work beyond their assigned hours, except when they accepted overtime work or worked during a meal period with appropriate pay for any such service having already been allowed.

In the opinion of the Board, since the "Exception" to Rule 3, *supra*, clearly and expressly prescribes that the Carrier may establish a three-shift inspection operation under the provisions of item (c) without being contractually obliged to extend the provisions of item (c) to the balance of the shop forces, and the standard line here in question falling within that exception, it must be concluded that the claim is without Agreement support.

That the Carrier, in October 1992, readvertised "all" assignments in the Back Shop, including the one-shift assignments of Laborers in other shops, to be eight consecutive hours, with a paid 20-minute lunch period, may not be viewed as constituting an acknowledgment that the claim has merit. As the Carrier points up, and the Organization has not otherwise refuted, this action was taken of the Carrier's own volition, or, as the Carrier says, "primarily to satisfy requests from employees on one-shift assignments for a 20-minute paid lunch period."

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.