

Award No. 595

Docket No. 570

2-PT-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

PORTLAND TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the shifts at the Rigby yards, Portland Terminal Company, Portland, Maine, be in compliance with Rule 2, of the current agreement and the memorandum of understanding, dated August 2, 1937.

JOINT STATEMENT OF FACTS: The following shows the assignment of employees in the car department of the Portland Terminal Company in the locations and on the dates as they appear:

Class	Force and Assign- ments as of Au- gust 18, 1937		Force and Assign- ments as of Au- gust 19, 1937		Force and Assign- ments as of Feb- ruary 21, 1940*	
	Number of Men	Assigned Hours	Number of Men	Assigned Hours	Number of Men	Assigned Hours
RIGBY REPAIR TRACK						
Air Rack Man	1	6 AM- 2 PM	1	8 AM- 4 PM	2	8 AM- 4 PM
Pass. Repair Men as needed	3	6 AM- 2 PM	3	8 AM- 4 PM	3	8 AM- 4 PM
Millman	1	6 AM- 2 PM	1	8 AM- 4 PM	1	8 AM- 4 PM
Wreckmaster	1	6 AM- 2 PM	1	8 AM- 4 PM	1	8 AM- 4 PM
Blacksmith	1	6 AM- 2 PM	1	8 AM- 4 PM	1	8 AM- 4 PM
Blacksmith Hlpr. as needed	1	6 AM- 2 PM	1	8 AM- 4 PM	1	8 AM- 4 PM
Painter	1	6 AM- 2 PM	1	8 AM- 4 PM		
Carman Helpers	2	6 AM- 2 PM	2	8 AM- 4 PM	1	8 AM- 4 PM
Carman "C"	28	6 AM- 2 PM	28	8 AM- 4 PM	19	8 AM- 4 PM
RIGBY YARD INSPECTION						
Carman-Insp. In Yard	2	8 AM- 4 PM				
Carman-Insp.	2	2 PM-10 PM				
" "	2	3 PM-11 PM				
" "	4	4 PM-12 Mid	8	4 PM-12 Mid	8	4 PM-12 Mid
" "	4	6 PM- 2 AM			2	6 PM- 2 AM
" "	2	9 PM- 5 AM	6	9 PM- 5 AM	9	9 PM- 5 AM
" "	2	10 PM- 6 AM				
" "	4	11 PM- 7 AM			3	11 PM- 7 AM

*Date check made.

The verbatim record of the entire minutes of conference for July 13, 1937 is now handed to the chairman for the Board's record.

The record conclusively proves that—

1. Rule 2 (a) specifically provides that the starting time of crews shall be arranged by mutual understanding consistent with the economical and efficient dispatch of work and requirements of the service, and meet the convenience of the employees as far as practicable.
2. Memorandum of understanding dated August 2, 1937, agreed to between the management and the employees in conjunction with Rule 2—Starting Time—specifically provides that further changes in hours of assignments may be made from time to time by mutual understanding when it is necessary to meet the requirements of the service.
3. From the verbatim minutes of the conferences, as quoted, it is clearly evident that the representatives of the employees and the management were in agreement as to the intent of both the rule and memorandum of understanding.
4. The assignments here in dispute were set up in strict compliance with the provisions of Rule 2 (a)—Starting Time—and memorandum of understanding dated August 2, 1937.
5. There is nothing in Rule 2 (a), the memorandum of understanding, or the verbatim minutes, which in any way intimates that the shifts in Rigby yard should be—

8 A. M. — 4 P. M.
4 P. M. — 12 Midnight
12 Midnight — 8 A. M.

6. The claim of the employees here in dispute—

That the shifts at the Rigby Yards, Portland Terminal Company, Portland, Maine, be in compliance with Rule 2, of the current agreement and the Memorandum of Understanding, dated August 2, 1937.

has been, and is now being, complied with.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The claim in this case reads:

“That the shifts at the Rigby yards, Portland Terminal Company, Portland, Maine, be in compliance with Rule 2, of the current agreement and the Memorandum of Understanding, dated August 2, 1937.”

The record shows that both Rule 2 and the memorandum of understanding, dated August 2, 1937, and effective August 19 of the same year, are

still in full force and effect; therefore the claim of the employees must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of March, 1941.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 595
DOCKET NO. 570**

NAME OF ORGANIZATION: Railway Employees' Department, A. F. of L.
(Carmen)

NAME OF CARRIER: Portland Terminal Company

Upon application of the representative of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Your request for an answer to each of the specific six questions outlined in your letter is inconsistent with the claim as originally presented to this Division and upon which Award No. 595 was rendered.

Circular No. 1 of the National Railroad Adjustment Board under the caption "Form of Submission—Statement of Claim" reads:

"Under this caption the petitioner or petitioners must clearly state the particular question upon which an award is desired."

Award No. 595 of the Second Division sustained the claim as presented, following the Finding that both RULE 2 and MEMORANDUM OF UNDERSTANDING dated August 2, 1937, are still in full force and effect.

The language contained in RULE 2 and the MEMORANDUM OF UNDERSTANDING is direct and specific; indicating that "The starting time of work and meal period and the duration of each shall be arranged by mutual understanding, consistent with the economical and efficient dispatch of work and the requirements of service, and meet the convenience of the employees as far as practicable." This language means neither party may arbitrarily decide the starting time of work as the rule definitely states that such "shall be arranged by mutual understanding." Certainly the phrase "mutual understanding" implies reciprocal relations; that is, due regard for the company's requirements as well as for the convenience of the employees, to the extent practicable.

The very fact that a MEMORANDUM OF UNDERSTANDING concerning the application of RULE 2 (a) was entered into on August 2, 1937, constitutes ample evidence of a proper conception of the requirements set out in this rule. In this MEMORANDUM OF UNDERSTANDING it was "FURTHER AGREED" that "further changes in hours of assignments may be made from time to time at these and other points within the jurisdiction covered by this agreement, by mutual understanding as specifically provided for in this rule, if and when it is necessary to meet the requirements of the service." It fol-

lows, therefore, that such changes in hours of assignment that may be made shall be arranged in the very same manner as the record shows the necessary changes were made on August 19, 1937.

It is very clear to the members of the Second Division that management and the employe representatives considered the application of RULE 2 (a) and mutually agreed to place an interpretation thereon by the very specific language used in the MEMORANDUM OF UNDERSTANDING of August 2, 1937.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1941.