

Award No. 1361

Docket No. 1280

2-Erie-FT-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Federated Trades)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That effective October 1, 1947, the carrier changed the hours of service of certain running repair employees from eight continuous hours ending at 4 P.M. and 8 A.M. to ending at 4:30 P.M. and 8:30 A.M., with thirty minutes for lunch, in violation of provisions of the current agreement.

2—That accordingly the carrier be ordered to:

a) Restore the aforesaid affected employees to their former assignment of hours.

b) Additionally compensate each of the aforesaid affected employees for their services daily from 4 P.M. to 4:30 P.M. and 8 A.M. to 8:30 A.M., in the amount of a minimum of one hour retroactive to October 1, 1947.

EMPLOYEES' STATEMENT OF FACTS: At Jersey City, N. J., in the car department terminal, the carrier maintained a force of approximately 200 employees consisting of carmen, electricians, sheet metal workers, machinists, helpers and apprentices, including coach cleaners, for the purpose of performing the necessary running repairs to commuter and through line passenger equipment around the clock, seven days per week.

Prior to October 1, 1947, the assignment of hours of these employees was from 8 A.M. to 4 P.M., 4 P.M. to 12 midnight and 12 midnight to 8 A.M., which is affirmed by the copy of letter submitted dated January 22, 1941, identified as Exhibit A. However, effective October 1, 1947, the hours of assignment of some of these employees were changed, thereby necessitating those affected to quit thirty minutes later, or on the first shift at 4:30 P.M. and on the last shift at 8:30 A.M. This is affirmed by the copy of bulletin submitted dated September 29, 1947, identified as Exhibit B, and the procedure pursued by the carrier immediately prior to the issuance of that bulletin is described in the copy of letter submitted dated September 30, 1947, from the local federation committee to the secretary-treasurer of System Federation No. 100, identified as Exhibit B-1.

It is the position of this carrier that the operations at Jersey City, N. J., now in effect are identical with what they were prior to 1940 and 1941 and that these operations located at the Jersey Avenue coach yard, Jersey Avenue Car repair shop and Monmouth Street coach yard are not continuous, around the clock, three-trick operations as contemplated by the rule. They are one-trick operations properly assigned with a lunch period in just the same manner as rip or repair track operations are assigned at many other points on this carrier.

To compel this carrier to work these claimants on a straight 8 hours without a lunch period would be unreasonable interference with the function of the management and in direct conflict with negotiated rules and practices of years standing.

Claim for restoration of war practice and for penalty payment should be denied.

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 record shows that at the Jersey City Terminal there are four locations where work is performed; that the work performed at these four locations is, in general, the same and consists of running repairs and maintenance of passenger coaches; that there is no interchange of work between the four locations and very little, if any, interchange of employes; and that there is no interchange of employes between those working at the Jersey City Station and Kelso Street Yard and the other three locations. The four locations are: Jersey City Station and Kelso Street Yard, Jersey Avenue Coach Yard, Jersey Avenue Car Repair Shop, and Monmouth Street Coach Yard.

The System Federation contends: because the work performed at these four places in the Jersey City Terminal is the same, because the places where the men work are all located within one seniority district, because the employes working at these four locations are all on one seniority roster, and because there are three shifts working at the Jersey City Station and Kelso Street Yard, that Rule 2 (c) of their agreement is applicable to all four groups of employes employed by carrier at these four different locations.

Rule 2 (c) provides as follows:

"(c) Where three shifts are employed, the starting time of the first shift shall be governed by paragraph (a), and the starting time of each of the other shifts shall be regulated accordingly. Each shift shall consist of eight (8) consecutive hours including an allowance of twenty (20) minutes for lunch within the limits of the fifth (5th) hour."

In Award 1153 of this Division the following definition of "shift," taken from Interpretation No. 4 to Supplement No. 13 to United States Railroad Administration General Order 27, Question 27, was quoted: "A shift is a tour of duty constituting a day's work for one or more employes performing the same class of work, covered by Supplement No. 13, at the same station, who begin work and quit work at the same time." (Underscoring ours.)

Unless it is so provided by the parties' effective agreement the carrier would not be under obligation to apply the provisions of Rule 2 (c) to all four working locations within the Jersey City Terminal. The purpose of Rule 24 (b) does not relate itself to Rule 2. Neither does Rule 2 (d) and

3 so provide. In fact, we find no specific rule in the agreement that would require carrier to do so. Merely because the work done at these locations is generally of the same class, because the places where the work is done is within one seniority district, and because the employees working at the different locations are all on one seniority roster does not obligate carrier to do so.

The record discloses that the employees here involved who work either at the Jersey Avenue Coach Yard, the Jersey Avenue Car Repair Shop, or the Monmouth Street Coach Yard are all subject to Rule 2, (a) and (d), as to the carrier's right to fix the time and length of their lunch period. Rule 2, (a) and (d), give carrier such authority. However, it provides, as a condition precedent to its right to exercise that authority, that the System Federation, through its proper representatives, be given a reasonable opportunity to mutually agree with the carrier as to the time when it should be taken and the length thereof. If no mutual agreement can be reached within a reasonable time after the opportunity therefore is given or if the representative of the organization refuse to act then a different situation arises but one with which we are not here concerned. Here the carrier merely notified the committee of the action it was taking without any effort on its part to give the proper representatives of the System Federation reasonable opportunity to try and mutually agree with it on when the lunch period should be taken and the length thereof. For the carrier thus to proceed to exercise this authority is in violation of the intent and purpose of the provisions of Rule 2, (a) and (d), relating thereto.

The record indicates that employees whose shift was changed to end at 8:30 instead of 8:00 A. M. were returned to their former quitting time as of November 1, 1947, and that proper adjustment of their time has been authorized and directed to be paid. If such has already been done they should not be paid twice by the allowance of this claim.

AWARD

Claim sustained subject to the following qualifications: if the employees for whom claim is here made that had a quitting time as of 8:00 A. M. prior to October 1, 1947, have had their quitting time returned to that hour as of November 1, 1947, and have had their pay properly adjusted in accordance with this claim during the period of time between these two dates, then they are not to be paid again.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1950.