

Award No. 2798

Docket No. 2550

2-B&M-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That effective December 30, 1955, the regularly assigned hours of the employees at Lowell were changed in violation of the current agreement from working 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., 11 p.m. to 7 a.m., to working from 8 a.m. to 4 p.m., 4 p.m. to 12 m.n., 12 m.n. to 8 a.m.

2. That each of the affected employees, namely, J. Campbell, W. Taylor, R. Gardiner, T. Russell, G. F. Hoar, A. Lavoie, D. Marchand, F. Ames, W. Bailey, W. Dauphinas, J. Moran, J. McNutte, B. Vinecomb, and C. Tousignant, are entitled to be additionally compensated in the amount of 1 hour at the time and one-half rate for the service they have each performed daily from 3 p.m. to 4 p.m., 11 p.m. to 12 p.m. and 7 a.m. to 8 a.m., retroactive to December 30, 1955.

3. That the assignment of hours from 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., 11 p.m. to 7 a.m. be reestablished.

EMPLOYEES' STATEMENT OF FACTS: Under date of October 28, 1955, the following notice was posted at Lowell, Massachusetts:

"ABOLISHMENT NOTICE

Account of change of hours, Lowell, Mass., effective at the close of work Friday, November 4, 1955, the following carmen's jobs will be abolished.

"Rule 2 of the parties' current agreement undoubtedly gives Carrier authority to fix a lunch period without pay but provides, as a condition precedent to the 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. Of course, if no mutual agreement can be reached within a reasonable time after the opportunity therefor is given or if the representatives of the organization refuse to act, then a different situation arises but one with which we are not here concerned. However, for the Carrier to proceed to exercise such authority without having given the proper representatives of the organization a reasonable opportunity to mutually agree with the Carrier in regard to the time and length thereof, was in violation of the provisions of Rule 2."

Therefore, the above proves conclusively that the carrier is fully supported in making the change.

In addition to the foregoing, Third Division Award No. 6872, opinion of the board, reads in part as follows:

"We think it proper for the Carrier to avoid the payment of overtime in any way that it can as long as no rules or provisions are violated in so doing."

Therefore, in view of the fact that the carrier has proven conclusively that the change was imperative, there is no justification for claim.

CONCLUSION

In view of the foregoing, this claim should be denied because of the following:

- 1—The employees arbitrarily refused to cooperate in the change of hours.
- 2—The carrier did not make the change, until total investigation was completed, and until the employees had an opportunity to present their objections.
- 3—Many awards by your Honorable Board support the carrier's position.
- 4—Records prove conclusively that the carrier's action was justified, in view of the train schedules causing unnecessary overtime, which was corrected by the revision of the hours; in conformity with Rule 2 of the effective agreement, supra.

The carrier has proven unequivocally that this dispute is absolutely without foundation and it is simply an arbitrary refusal to agree upon a rule, in order that the allegedly aggrieved employees would receive exorbitant overtime payments.

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.

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

At issue here is the proper interpretation and application of Rule 2, which reads:

"Rule 2. 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."

The differences between the parties arose as a result of the respondent changing the starting time of shifts. Each shift's starting time was in effect advanced one hour. Reparations are sought for each of the named claimants to the extent of pay for one hour, at the punitive rate.

In brief, the organization asserts that the starting time of the shifts, prior to their change, had been, in effect, negotiated by virtue of which fact they (starting times) could not now be changed by the unilateral action of the carrier, but to the contrary, were and are subject to change only in involving the procedures of Section 6 of the Railway Labor Act, as amended.

On the basis of the record here we conclude that the above quoted rule was not violated. The organization was consulted, and presented with ample opportunity to present evidence of lack of need for the proposed change. No such evidence was forthcoming. The rule, as written, contemplates any change in starting times will be predicated on the requirements of the service. While the rule assures that the parties will exert their best effort to arrive at a mutual understanding, the failure to achieve this end does not carry with it the power of the organization to, in effect, veto any such changes.

We conclude that the changes made were to meet the exigencies of the service, were not arbitrarily made, or in bad faith and thus not in contravention of Rule 2. See also Award 1320 of this Division.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1958.