

Award No. 2801
Docket No. 2649
2-HB&T-FT-'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. 14, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Federated Trades)**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current agreements the Houston Belt and Terminal Railway Company arbitrarily assigned employes of the mechanical crafts in the roundhouse to work weeks of five days from 8 A.M. to 5 P.M. and 7 P.M. to 4 A.M.

(2) That accordingly the Houston Belt and Terminal Railway Company be ordered to additionally compensate the following named employes:

- a) Electricians Erich Hausenstien and A. O. Woolridge
ridge
- b) Coppersmiths (S. M. W.) Raymond Heichelbeck
and Robert L. Powell
- c) Machinists George Peppas, E. V. Greene and A. B.
Ford
- d) Machinist Helpers N. Munks and W. Dolphin

retroactive to December 14, 1956, each at their applicable rates of pay in the amount of:

- e) From 7 A.M. to 8 A.M. one hour at the pro rata
rate
- f) From 8 A.M. to 4 P.M. eight hours at the pro rata
rate

g) From 4 P.M. to 5 P.M. one hour at the time and one-half rate

less the amount of pay which these employes have each received for such regular hours of assignment.

(3) That accordingly the Houston Belt and Terminal Railway Company be ordered to additionally compensate the following named employes:

- a) Electricians D. B. Richter and W. D. Lowe
- b) Machinists A. Ferraro and O. Chapa
- c) Machinist Helpers Leo Taylor and Abe Harris

retroactive to December 14, 1956, each at their applicable rates of pay in the amounts of:

- d) From 7 P.M. to 8 P.M. one hour at the time and one-half rate
- e) From 8 P.M. to 4 A.M. eight hours at the pro rata rate
- f) From 4 A.M. to 5 A.M. one hour at the pro rata rate

less the amount of pay which these employes have each received for said regular hours of assignment.

EMPLOYES' STATEMENT OF FACTS: The Houston Belt and Terminal Railway Company (hereinafter referred to as the carrier) prior to August 18, 1951 employed the six mechanical crafts in its roundhouse on the basis of three standard shifts; namely, 7 A.M. to 3 P.M.; 3 P.M. to 11 P.M. and 11 P.M. to 7 A.M., thereby allowing each shift of employes twenty minutes for lunch with pay, and this is affirmed by Bulletin No. 653, dated August 8, 1951, reading as follows:

"ALL SHOPMEN—SKILLED CRAFTS

"Effective with close day's work Friday, August 17, 1951, all skilled craft positions at Roundhouse as listed below will be abolished except Engine Inspectors who will remain assigned 7:00 A.M., 3:00 P.M. and 11:00 P.M.:

Machinists and Helpers	Machinist Apprentices
Boilermakers and Helpers	Welder and Helper
Blacksmith and Helper	Coppersmith and Helpers
Coppersmith Apprentice	Electricians and Helpers
Electrician Apprentices	Painters
Tankman and Helper	Cellar Packer

/s/ A. B. Atkinson
Master Mechanic

cc: To Committee"

carrier's records, the first time that this specific contention appeared, although, as above shown, there had been two starting times in effect on each of the two shifts since the change to a two-shift operation, almost four years previously. The "bulletin" referred to in Mr. Winn's letter July 29 (Exhibit L) did not establish a new starting time; it simply changed the number of men starting at 8 A.M. Four starting times (7 A.M., 8 A.M., 7 P.M., 8 P.M.) had been in effect since August, 1951. This claim, the handling of which ran into considerable delay at request of the organization, first because of Mr. Thornton's expressed desire that the "entire General Committee" "review the case" before submitting to me for final handling, and then, later, because of Mr. Thornton's illness, was finally declined in conference with Acting President Hammond November 15, 1956, confirmed in my letter to him dated November 19 (Exhibit M) and with Assistant to President Hamilton February 8, 1957, as confirmed in my letter to him of February 11 (Exhibit N).

That case closed with an acknowledgment from Mr. Hamilton dated February 19 (Exhibit O), but in the meantime the present claim dated February 13 (Exhibit P) was filed with Mr. Atkinson on the identical basis; Mr. Atkinson declined it February 20 (Exhibit Q). It was appealed by Mr. Hammond to me March 5 (Exhibit R), and declined by me March 12 (Exhibit S). There was a further exchange of letters (Exhibits T, U and V), followed by a conference April 3—my letter April 4 (Exhibit W) confirmed results thereof, and then came Mr. Fox's notice to your Board of his intention to submit the case to you ex parte.

POSITION OF CARRIER: It is carrier's position (as pointed out in Exhibits M and N) that Rules 3(a) and 2 are susceptible to no possible construction which would support employes' claim. The language is clear in permitting the four starting times (7 A.M., 8 A.M., 7 P.M. and 8 P.M.) in a roundhouse on two-shift operation—in fact, numerous additional starting times would be permissible thereunder.

Furthermore, as additionally pointed out in Exhibits M and N, ever were Rules 3(a) and 2 ambiguous, the employes, in accepting the settlement set forth in Mr. Leach's letter to Mr. Hamilton of April 23, 1952 (Exhibit F), agreed to carrier's interpretation thereof, agreeing that the two shifts as then set up were "recognized as being in accordance with the current agreement", and Exhibit I proves beyond dispute that these four starting times were in effect on the day this settlement was accepted. As in Award 758, it would seem that the employes have waived any right to a different interpretation of these rules.

Finally, while carrier can conceive of no basis on which the employes' contention could be sustained, certainly even should your Board decide otherwise, no provision in the agreement permits recovery for the compensation claimed; the several awards, e.g. 1241, 1405, in which violations of the starting time rule were involved, allowed no payments such as the employes here claim.

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.

Claim is here made in behalf of certain named individuals for compensation to the extent of one (1) hour's pay, pro rata rate, retroactive to December 14, 1956, account of alleged violation of applicable rules relating to change of shifts.

Controlling rules on this subject are Rules 2 and 3 which provide as follows:

"Rule 2. One Shift. Where but one shift is employed, unless otherwise provided for, the starting time will not be earlier than 7:00 o'clock nor later than 8:00 o'clock A.M. or P.M. In roundhouse, employees starting work at 7:00 o'clock, 7:30 o'clock or 8:00 o'clock A.M. or P.M. will be considered as working one and the same shift."

"Rule 3. Two Shifts. (a) Where two shifts are employed, the starting time of the first shift will be governed by Rule 2 and the second shift will start not later than 8:00 P.M.

(b) Where one and/or two shifts are employed, the time of the lunch period will be between the fourth and sixth hours and the length of period will be subject to mutual agreement, but will not be less than thirty (30) minutes, nor more than one hour. The lunch period under this rule will not be paid for unless worked."

The crux of this dispute stems from the respondents' change from a three (3) to a two (2) shift operation, with the resultant establishment of four (4) different starting times. It is alleged that the creation of different starting times had the effect of creating lap shifts in direct contravention of Rule 3, which is contended, specifically provides for only one (1) starting time for each of the two (2) shifts.

We are of the opinion that Rules 2 and 3 are ambiguous in their meaning. While we agree with, and hereby reaffirm our adherence to the interpretation placed upon similar rules to those here involved (Award 1241), we are of the opinion that the parties did, by their letter of agreement bearing date of April 23, 1952, mutually resolve their differences and clarify any existing ambiguities.

This letter of agreement provides in part as follows:

"In allowing these claims, it is understood that it satisfies the claims listed above, and also agreed that the present two shifts are now recognized as being in accordance with the current agreement."

A sustaining award would in effect nullify the mutually agreed upon settlements and interpretation of the rules in question. This the Board is powerless to do.

AWARD

Claims 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.