

Award No. 2988
Docket No. 2667
2-PULL-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier violated Memorandum of Agreement in connection with Rule 2, when they abolished the 4 P.M. to 12 P.M. shift at Miami, Florida without first referring the matter to the General Chairman of the craft involved for review and disposition after local committee and Carrier failed to agree.

2. That, accordingly, the Carrier be ordered to compensate all employes affected by this violation for the first change of shift worked at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: During a conference called by the supervision of the carrier at Miami on April 13, 1956 the local committee of the B.R.C.A. failed to concur with management that the abolishment of the 4-12 P.M. shift was either necessary or desirable and they asked for and obtained a delay of time in order to reply. The question was put to a vote by their lodge and the membership was unanimously in favor of dissenting. The carrier was so advised, but in spite of the lack of agreement between the local committee and management, the subject matter in dispute was never referred to the general chairman of the carmen for review and disposition on the basis of its merits.

It was only after denial had been received on May 29, 1956 to the grievance of May 11, 1956 (from our local committee) that the general chairman of the carmen was made aware at all of the dispute. Then the claim was handled up to and including the highest designated officer of the carrier, and denied by them.

The agreement effective June 16, 1951, as subsequently amended, is controlling.

4305 (Frank Elkouri, Referee) settling a dispute filed in behalf of certain named employes and "for other similarly affected employes," the Board denied the claim for "other similarly affected employes" as follows:

"The claims for 'other similarly affected employes' must be denied. The only claims properly before the Board for its consideration are those of named parties for specified dates and locations. In Award 906 this Board said: 'The claim in this case should be restricted to the employes specifically named therein, since the correspondence shows that they were the only ones discussed in conference.' (Also see Award 1566).

CONCLUSION

In this ex parte submission the company has shown that it properly abolished the 4:00 P.M.-12 M shift, effective April 29, 1956. Also, the company has shown that the organization has improperly interpreted the provisions of the **Memorandum of Agreement in Connection with Rule 2**. Additionally, the company has shown that employes affected by the change in shifts were properly paid at the rate of time and one-half. Further, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The claim filed by the organization in behalf of "all employes affected" by the company's action in abolishing the 4:00 P.M.-12 M shift in Miami is without merit and 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 respectfully 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.

In May 1955 claims arose when certain positions were changed from the 4 P.M. to 12 M. shift to the 12 M. to 8 A.M. shift. They were settled by letter dated November 7, 1955, which contained the following:

"It was further agreed in conference that the request for abolishment of the present 12:00 Midnight to 8:00 A.M. shift was being withdrawn by the Organization with the understanding that if it is decided to work a 12:00 Midnight to 8:00 A.M. shift after the termination of the 1955-56 winter season in Miami, the provisions of the Memorandum of Agreement in connection with Rule 2 appearing on Page 56 of the Agreement will be complied with."

Near the termination of the 1955-56 winter season the Company decided that service requirements indicated it should abolish the 4 P.M. to 12 M. Shift and to continue to work a 12 M to 8 A.M. shift. On April 11, 1956 Local Management representatives conferred with the Local Committee about the matter and on April 17th the Local Committee advised that it could not agree to the use of the 12 M to 8 A.M. shift. That dispute was not then referred to the

Management and the General Chairman for disposition on its merits, as required by the Memorandum of Agreement in Connection with Rule 2. Rather the Company gave notice on April 23, 1956 of abolishment of all positions and bulletined new positions on the 12 M to 8 A.M. and 8 A.M. to 4 P.M. shifts effective April 30, 1956.

Under the circumstances here the Company did violate the Memorandum of Agreement in Connection with Rule 2 in the very situation it had agreed it would comply with the same. Accordingly Part 1 of the claim must be sustained.

The Company objects to Part 2 of the claim on the basis that it has not been properly presented since the employes allegedly affected have not been named. That objection was not raised on the property and it is clear that the local officials and committee knew the identity of those employes affected, and in any event their identity is readily established by reference to Bulletins 54 and 55, advertising positions for bid, dated April 22, 1956, and the Notices of Award thereon, dated April 27, 1956.

Accordingly we find the circumstances here similar to those involved in our Award No. 2195 where we sustained a claim in which the individuals were not named but whose identity was known.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.