

Award No. 3087
Docket No. 2828
2-NYC&StL-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division of the Adjustment Board consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 23, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY, THE**

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the controlling agreement, particularly Rule 5(D), Carman R. C. Arney was improperly compensated for services performed on July 14, 1956.

(2) That accordingly, the Carrier be ordered to compensate this claimant for an additional four hours at the pro rata rate of pay.

EMPLOYEES' STATEMENT OF FACTS: At Brewster, Ohio, the carrier posted for applications, a new position as car inspector in its train yards with hours of 6:30 A. M. to 2:30 P. M.

Carman R. C. Arney, who was regularly assigned as such to the Box Car Program Steel Track from 8 A. M. to 12 noon—12:30 P. M. to 4:30 P. M. worked his regular tour of duty July 13, 1956. During the day he was instructed to report to the train yard the morning of July 14, 1956 for the purpose of working the bulletined position until the closing date for applications therefor.

Claimant reported and worked as instructed and received the straight time rate of pay for July 14, 1956.

This dispute has been handled as provided for in the agreement effective September 1, 1949 as subsequently amended with the result that the highest officer designated by the carrier to handle such matters has declined to adjust it.

times on the same shift, such as on the repair track where some of the men on the first shift start at 7:00 A. M. and others at 8:00 A. M. Nevertheless the parties used the word shift and meant it, but the employes are now asking your Board to substitute language more to their liking.

It should be noted that there has been no allegation by the employes that there was any improper transfer of assignment or transfer of claimant and neither have they contended that both assignments were not first shift assignments. Instead they contend in principle that Rule 5(D) is a starting time rule and is a limitation on a change of starting time within a shift as well as a limitation on a change of shift.

The first shift is used in the singular in both Rule 1(C) and Rule 5(D) and both assignments were on the first shift within the meaning of those rules. Rule 5(D) is a limitation on the change of shift and not a limitation on starting times within a shift, the latter being the purpose and function of Rule 1(C).

Rule 5(D) was not violated and the claim is entirely 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 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.

Parties to said dispute were given due notice of hearing thereon.

Richard Arney was assigned to a position on the Brewster Steel Track. His hours were from 8:00 A. M. to 4:30 P. M. On July 13, 1956, he was assigned to a position in the Train Yard with hours from 6:30 A. M. to 2:30 P. M. Mr. Arney is claiming overtime under Rule 5 (D) for working more than two shifts in 24 hours or less.

The agreement of September 1, 1949, as amended, is controlling. The Claimant relies on Rule 5 (D), which provides, "Employes taken from one shift and transferred to another by the Company will be paid overtime rates for the first day's work on the shift to which they are transferred, providing such employes perform service on more than one shift within 24 consecutive hours".

And so the question presented here is, Was there a change of shift or change of assignment? The Claimant insists that a change in the starting time constitutes a change of shift. Contrary to what the Claimant says, there are different starting times on the same shift. Rule 1 (C) says in part, "That the starting time for the first shift * * * for forces engaged in repairing cars on Repair Tracks at Brewster * * * will not be earlier than 7:00 A. M. and not later than 8:00 A. M.". It should be noted that Carrier also had different starting times in the first shift in the Train Yard. It must be borne in mind that the controlling agreement here is not a so-called **standard agreement**. This agreement does not contain a rule which is in most agreements requiring that the starting and quitting time for all men on each shift be the same.

Under the controlling agreement here we find that this transfer was a change of assignment and not a change of shift. This Board can do nothing but interpret the agreement. We cannot write a rule. Therefore, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.

DISSENT OF LABOR MEMBERS TO AWARD No. 3087

The question presented here is not "Was there a change of shift or change of assignment?" The sole question presented here is whether the claimant by being transferred from one shift to another performed service on more than one shift within twenty-four consecutive hours? That he did so can readily be seen by reading the record which discloses that the claimant was transferred from his regular shift with hours 8:00 A. M. to 4:30 P. M. to a shift with hours 6:30 A. M. to 2:30 P. M., thus performing service on more than one shift within twenty-four consecutive hours?

The majority states "We cannot write a rule" but it is apparent that they have attempted to do so in the instant erroneous findings.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner