Award No. 3602

Docket No. 3378

2-CofG-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier changed the hours of service of Coach Cleaners at Savannah, Georgia, effective April 5, 1958, from two shifts of eight (8) consecutive hours each, beginning at 7:00 A. M. to 3:00 P. M. and from 11:00 P. M. to 7:00 A. M.; to one shift beginning at 2:00 A. M. to 6:30 A. M. and from 7:00 A. M. to 10:30 A. M., with 30 minutes for lunch, in violation of the controlling agreement.

2. That accordingly the Carrier be ordered to restore the Coach Cleaner's hours at Savannah, Georgia to conform with the agreement, and

3. Additionally compensate Coach Cleaners Robert Edwards, Sr., Ernest Milton, Elbert Jenkins, Archie Harris, H. T. Robeson and any other coach cleaner, or coach cleaners, on the Savannah Coach Cleaners Seniority Roster who may be working in their place and/or who may be working such improper hours as were established effective April 5, 1958 by Savannah Shop Bulletin No. S-13-58, for three and one-half (3½) hours at straight time for each and every work day between the hours of 11:00 P. M. and 2:00 A. M., and between 6:30 A. M. and 7:00 A. M. account not being allowed to work these hours that would be in their regular assignment, and for the difference between straight time and time and one-half for all hours between 7:00 A. M. and 10:30 A. M. which they were required to work beyond what would have been their regular assignment, beginning on April 5, 1958 and continuing until this violation is corrected, had they not been improperly assigned to work from 2:00 A. M. to 10:30 A. M. in violation of the agreement.

EMPLOYES STATEMENT OF FACTS: Prior to April 5, 1958, the Central of Georgia Railway Company, hereinafter referred to as the carrier, had three shifts of car inspectors working shifts beginning at 7:00 A. M., 3:00 P. M., and 11:00 P. M., with two shifts of coach cleaners beginning at 7:00 A. M. and 11:00 P. M., with no coach cleaner assignments on the second shift.

Effective April 4, 1958 all coach cleaner assignments at Savannah, Georgia were abolished; and effective April 5, 1958, one shift of coach cleaners was established with hours of 2:00 A. M. to 6:30 A. M. and 7:00 A. M. to 10:30 A. M., with 30 minutes for lunch.

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 and 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 waived right of appearance at hearing thereon.

The rules of the current agreement are concise regarding starting times of the shifts. Rule 2 reads in part that "when one shift is employed, the starting time shall not be earlier than 7:00 A. M. nor later than 8:00 A. M." This is the controlling rule along with 4 and 5 in the instant dispute since Rule 3, relied upon by the carrier relates to the establishment of a second shift.

Rule 132 states that "except as provided under the special rules of each craft, the general rules shall govern in all cases." Hence Rule 2 governs in this claim, since no contrary provision is made under Rule 125—Coach Cleaners, located in the Carmen's Special Rules.

Rule 125 states "Coach Cleaners to be included in this agreement and will receive overtime as provided herein." However, the mention of overtime does not exclude from the coach cleaners the benefits of the remainder of the general rules. This has not been the practice on the property nor is it indicated in the agreement.

The fact that the carrier attempted to negotiate a change in shift hours does not relieve the carrier of the necessity of abiding by the agreement provisions when such negotiations failed. The Board holds that the carrier erred in unilaterally changing the hours of service in violation of Rules 2, 4 and 5 of the controlling agreement.

Part 3 of the claim is sustained to the following extent. The claimants as expressed in the claim will be additionally compensated 3½ hours at pro rata rate for each day worked, April 5, 1958 to December 31, 1958 inclusive; 2 hours at pro rata rate, January 1, 1959 to June 22, 1959 inclusive; and 1 hour pro rata rate, June 23, 1959 to the date of correction.

This limitation is due to the fact that the claimants' shift was rebulletined on January 1, 1959, 12:30-9:30 A. M. and that the controlling three shifts of car inspectors and oilers were rebulletined on June 23, 1959 with third shift 12-8 A. M. The Board also holds that under the circumstances of this claim the penalty rate for depriving an employe of work is pro rata rate of the position even where time and one-half would otherwise be applicable.

AWARD

The claim is sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1960.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 3602
DOCKET NO. 3378

NAME OF ORGANIZATION:

SYSTEM FEDERATION NO.26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

NAME OF CARRIER:

CENTRAL OF GEORGIA RAILWAY COMPANY

QUESTION FOR INTERPRETATION: Does the language contained in the findings of Award No. 3602, reading:

> "Part 3 of the claim is sustained to the following extent. The claimants as expressed in the claim will be additionally compensated * * *"

require the carrier to additionally compensate Coach Cleaners on the Savannah Coach Cleaners Seniority Roster who were required to work in place of employes named in Part 3 of the employes' claim?

Due to the continued decline in passenger travel and to get full utilization of coach cleaners, as stated by the carrier, it was deemed necessary to eliminate one shift of cleaners and rearrange hours to suit schedules so that one shift could clean both the day and night trains. These changes were made unilaterally, effective April 5, 1958 and were grieved April 15, 1958. Those employes working the newly bulletined shift hours were named, but in the course of time, as the violation of the agreement continued the carrier made changes among the affected coach cleaner personnel. The carrier did not protest the wording of the claim in reference to unnamed claimants until the final step in processing the grievance on the property. The names of the individuals affected are easily ascertainable, their status in the dispute was known and the facts connected with carrier's violation of agreement were equally developed both in reference to the named claimants and the replacements.

Hence the Board stated that the claimants as expressed in the claim were to be compensated. Thus Award 3602 requires the carrier to additionally compensate coach cleaners on the Savannah Coach Cleaners Seniority Roster who

were required to work in the place of employes named in part 3 of the employes' claim.

Refreee Wilmer Watrous, who sat with the Division as a member when Award No. 3602 was adopted, also participated with the Division in making the interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December 1961.

DISSENT OF CARRIER MEMBERS TO INTERPRETATION NO. 1 TO AWARD NO. 3602, SERIAL NO. 46

In the findings of Award 3602 we read: "Part 3 of the claim is sustained to the following extent. The claimants as expressed in the claim will be additionally compensated * * *." (Emphasis ours) The carrier complied as directed in Award 3602 and paid the expressed claimants.

The employes then returned to the carrier and asked pay for other employes not expressed in the claim who may have been involved. The carrier declined, because this request was outside of the award. The employes then returned to the Board under the provisions of Section 3, First (m), of the Railway Labor Act, asking for an interpretation of the award.

The carrier believing that the award was ill-advised, nevertheless properly complied because it was clear and definite. The employes in their quest for additional pay for others who may have been involved have not been able to show to the carrier just who are involved and did not receive pay under Award 3602. The only claims discussed and handled on the property were for the named claimants. No others were discussed or handled on the property. The employes erred when they said, "The carrier has not fully complied with the award * * *." What they were actually attempting to get, under the pretense of seeking an interpretation of the award, was support for a new dispute not properly before us.

An erroneous interpretation such as this goes a long way toward destroying confidence in the adjudicatory processes envisaged by the Railway Labor Act.

The claim as submitted and sustained by the Board is vague and indefinite and for that reason alone should have been rejected by the Board.

It is clear the employes' blanket request does not satisfy the requirements of the Railway Labor Act and Article 5 of the November 5, 1954 Agreement. Instead of containing the definite determination of fact as to the employes entitled to additional compensation as contemplated and required by Article 5, the interpretation purports to reward many employes who possibly were not in any way even affected by the alleged violation.

The Railway Labor Act and Article 5 of the November 5, 1954 Agreement do not require the carrier to search its records to determine the dates when

others were used in place of claimants and the names of the employes to whom allowances are to be paid. Moreover, it is probable that the carrier does not have records available to make such a determination. The Railway Labor Act contemplates not merely general conclusions, but precise and definite findings of fact and final and definite Board decisions capable of enforcement, and Article 5 of the November 5, 1954 Agreement further accentuates and spells out this requirement.

It has long been axiomatic with this Board that to fulfill its function of dispute settlement, a uniformity of interpretation of labor agreements is essential. For this interpretation to be the exact opposite of numerous other awards and contra to many court decisions involving the very same dispute, only serves to create further disputes involving the identical issue, and certainly it is out of step with the better reasoned awards on this question.

This interpretation does not advance any reasons for not following previous awards and court decisions. Therefore, it is apparent that the majority did not correctly read and comprehend the plain language of Article 5 of the November 5, 1954 Agreement. This inconsistent and erroneous interpretation is wrong, valueless as precedent, and in addition is of doubtful legal validity, and leaves the carrier in a real quandary.

For the reasons herein stated, we dissent.

P. R. Humphreys

H. K. Hagerman

D. H. Hicks

W. B. Jones

T. F. Strunck