

Award No. 3607
Docket No. 3469
2-B&O-SMW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. L.—C. I. O. (Sheet Metal Workers)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier arbitrarily changed the starting and quitting time of the Sheet Metal Workers in the Water Station Department on the Cumberland Division, on November 1, 1957.

2. That the assignment of hours from 7 A. M. to 3:30 P. M. be reestablished.

3. That accordingly Carrier be ordered to additionally compensate Sheet Metal Workers H. P. Northcraft, R. J. Helmstetter, P. H. Lueck, G. G. Buskey, J. H. Hamilton, Jr., P. E. Adams, E. W. Conn and J. S. Gary, sheet metal worker apprentice E. C. Dillon and Sheet metal worker Helper, J. B. Hamilton, Sr. each in the amount of 30 minutes at the overtime rate for each work day retroactive to November 1, 1957 until date of correction of violation.

EMPLOYES' STATEMENT OF FACTS: On October 28, 1957, the carrier posted notice and issued instructions effective November 1, 1957, all M of W forces working hours would be 7:30 A. M. to 11:30 A. M. — 12:00 Noon to 4:00 P. M.

On Wednesday, October 30, 1957, Sheet Metal Workers' Local Chairman George F. Buskey called Division Engineer F. F. Schilt by telephone and protested the changing of these working hours for the sheet metal workers. Division Engineer Schilt stated he had instructed H. C. Braithwaite, master carpenter, to post the notice and Division Engineer Schilt declined to adjust the complaint.

The carrier directs particular attention of the findings in Award 2798 which state "* * * 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. * * *."

**There is no basis in any rule in the working agreement
for the claim for damages asserted by the claimants:**

Part 3 of the claim as made is a request that this carrier be ordered to compensate certain named claimants "* * * each in the amount of 30 minutes at the overtime rate for each work day retroactive to November 1, 1957 until date of correction of violation. * * *."

When this case was discussed on the property of this carrier the organization cited no rule in the working agreement that would support a claim for damages. In point of fact there is no rule appearing in the working agreement that would support such a wage claim.

In fact it has already been ruled before this Board in a case arising on the property of the MKT Railroad that where no effort had been made by the carrier to contact the local organization as to an intended change in starting time, still claims for damages where the carrier had placed changed starting times into effect could not be maintained. In Award No. 2722 (System Federation 8 (Carmen) v. MKT) this Division with Referee Ferguson ruled:

"There is no rule cited nor are there any facts contained in the record which would support any claims for compensation, which this Board finds therefore without merit."

In a word, the carrier submits that this claim at Part 3 is wholly without merit because there is no rule appearing in the working agreement which would support any such claims for damages.

In summary the carrier submits that this claim in its entirety at both Parts 1, 2 and 3 is totally without merit. The carrier respectfully requests that this Division so hold and that the claim in its entirety be declined.

FINDINGS: The Second Division of the Adjustment Board, based upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees 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.

The carrier changed the shift starting and quitting time of the sheet metal workers in the Water Station Department on the Cumberland Division on November 1, 1957 and subsequently, on April 28, 1958 restored the original assignment hours.

The organization charged that rule 2 and the interpretation to rule 2 of the controlling agreement were violated. It is the opinion of the Board that the interpretation to rule 2 established the procedure where departures from (exception to) the established starting times are involved. Exceptions must be mutually arranged between the Management and the General Committee. If they fail to agree, status quo will prevail, i. e. "all employes on a shift will start and quit at the same time."

However, rule 2 provides that "the starting time of any shift shall be arranged by mutual understanding between the local officers and the employes' committee based on actual service requirements." Conformity to this rule requires a sincere attempt to arrive at an understanding; after which the carrier may proceed with the change if it is prepared to show that the organization refused to be guided toward an understanding based upon service requirements.

Here no attempt was made to arrive at an understanding. On the contrary, the Carrier made its decision, posted the bulletins and only discussed the issue when the local committee protested the change two days prior to the effective date. The fact that only a half hour was involved and that the change might have been justified is not material to the issue. The employes were deprived of their voice in the matter.

It will be noted that the half hour claimed completes the minimum provided in the first paragraph of rule 4. This claim is sustained for 30 minutes at time and one half during the period November 1, 1957 to date of correction, April 28, 1958.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

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