

**Award No. 4121
Docket No. 3998
2-P&LE-TWUOA-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, A. F. of L. — C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY
and
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: At Pittsburgh Station the employes have only three starting times, 8:00 A. M., 4:00 P. M. and 12:00 P. M. This is changed during daylight savings time to 7:00 A. M., 3:00 P. M. and 11:00 P. M. The starting time as here stated is agreed to by the committee and the foreman. On April 19, 1960 without agreement with the committee the foreman changed the starting and quitting time of four (4) employes. These employes are required to start one (1) hour earlier and quit one (1) hour earlier than the rest of the employes. This has created a fourth shift which is a violation of the agreement Rule 2, paragraph (a). Since the agreement has been violated the organization requests that the following employes involved: Joseph Kirsch, Stephen Dunchak, Stephen Faull and Joseph Napiecek be paid one (1) hour at the punitive rate of pay for being required to start earlier than other employes and one (1) hour at the pro rata rate of pay for quitting earlier than other employes. These time claims to continue until this practice has been stopped.

EMPLOYES' STATEMENT OF FACTS: This case arose at Pittsburgh Station and is known as Case PS-47.

The carrier did establish a fourth shift when the time of four (4) employes was changed not to correspond with the time of the other employes at this point. This was in violation of the agreement Rule 2, paragraph (a).

That nowhere in the agreement does it give the carrier the right to establish more than three shifts at any given point or seniority district.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the

See also First Division Awards 15294, 15295, 15358 and numerous others.

CONCLUSION:

Carrier's position may be summarized as follows:

1. Carrier, in good faith and in accordance with Rule 2(a) of the carmen's agreement, attempted to secure the concurrence of the organization in changing the starting times of certain car oiler and packer assignments;
2. After this attempt failed, and in order to comply with the service requirements, carrier had no choice but to unilaterally place these changes into effect, and
3. Awards of the Second Division, National Railroad Adjustment Board, support carrier's position.

All data in connection with this dispute have been made known or available to the organization during conference or otherwise.

Carrier respectfully submits that this claim 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 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 basic claim is that by starting four car oilers and packers an hour earlier than the other employes on their shift at the Pittsburgh Passenger Station the carrier "created a fourth shift which is a violation" of Rule 2(a).

The record shows without dispute that prior to April 19, 1960 the carrier had had an oiler on each trick, but as the second trick oiler had only two passenger trains to service, requiring only about fifteen minutes each, the position had been abolished as of that date, and the two trains were serviced by the second trick car inspector; that daylight time became effective on April 24th, and as the carrier then operated on daylight time and the B&O and the local transportation system using the station continued to operate on standard time, the first trick and third trick oilers by starting and quitting an hour earlier, could service all the trains; that on account of service requirements it has not been unusual for car inspectors at certain locations to have different working hours than other employes on the same trick, with the Organization's concurrence.

Under these circumstances we cannot conclude that by establishing a one-hour earlier starting time for one car oiler on each of the two tricks, the carrier has established a fourth shift, or fourth and fifth shifts.

The Employees rely upon Award 2861, in which a similar claim was sustained in part, but mainly upon the different ground that the claimants' starting time was not "arranged by mutual understanding," the Organization having been asked to agree, and having refused.

But in Award 2798 this Division said:

"The organization was consulted, and presented with ample opportunity to present evidence of lack of need for the proposed change. No such evidence was forthcoming. The rule, as written, contemplates any change in starting times will be predicated on the requirements of the service. 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."

In Award 2798 reference was made to Award 1320 in which a like claim was denied under similar rules and facts.

Similarly, in Award 2722 this Division said:

"As a practical matter the carrier in most instances can reasonably be expected to be responsible for proposing the anticipated changes. The limitation of the rule does not permit the carrier to bypass the committee without attempting to reach an arrangement by mutual understanding. Neither is the carrier justified in concluding, without such effort, that actual service requirements nullify the mandatory provisions of the rule.

"However, there are practical considerations which confront the parties when occasions require the operation of the rule. Evidently the reasons underlying the rule were the possible conflicts between the demands of the service which concern the carrier, and the personal dislocations of the employes which are a matter of moment to the brotherhood. Under the rule neither the carrier nor the organization may arbitrarily take a positive or negative, adamant or immovable position. Each should approach their joint problem in good faith and should make more than a token effort to reach understanding. Both parties thus bring their experienced assistance to the solution of the problems of continued operation which is their only reason for being.

"If after conference no agreement is reached, then and only then, may the management exercise its retained prerogative and assert its responsibility to function by initiating the changes required by actual service. It follows that the employes retain the right to challenge the carrier's action on the ground of poor faith bargaining, at which time the organization's good faith or lack of it will necessarily be demonstrated.

"In this docket no such effort was made by the carrier and the rule has been violated."

In Award 2722 the claim was sustained because the carrier had made the change without consulting the Organization. But like Awards 1320 and 2798 it constitutes a precedent for the denial of this claim.

Award 2861 makes no reference to Awards 1320, 2722 or 2798, and apparently they were not cited in that case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4121

The majority is in error in finding that "Under these circumstances we cannot conclude that by establishing a one-hour earlier starting time for one car oiler on each of the two tricks, the carrier has established a fourth shift, or fourth and fifth shifts."

Rule 2(a), reading as follows:

"There may be one, two or three shifts employed. Starting time of any shift shall be by mutual agreement or understanding between the local officers, local committee, local chairman and the staff representative, based on actual requirements."

provides for establishing one, two or three shifts and the starting time of any shift to be mutually agreed upon between the local officers, local committee, local chairman and the staff representative. There are no provisions in the rule that permit the carrier to establish more than three shifts.

From the undisputed facts of record the carrier, by this change in work assignment, arbitrarily established a fourth and fifth shift in violation of agreement Rule 2(a).

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink