

Award No. 4203

Docket No. 4004

2-CB&Q-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago, Burlington & Quincy Railroad Company assigned a fourth shift of two car inspectors at Denver, Colorado contrary to the agreement which is controlling and did so without bulletining the positions.

2. Accordingly, Car Inspectors Jack Mauter and Dale Manning are respectfully requested to be returned to their former shift of 4:00 P. M. to 12 Midnight and hereafter all new positions be bulletined.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 16, 1960 at Denver, Colorado, the Chicago, Burlington & Quincy Railroad Company, hereinafter called the carrier, maintained three shifts of car inspectors. First Shift — 8:00 A. M. to 4:00 P. M. Second Shift — 4:00 P. M. to 12:00 Midnight. Third Shift — 12:00 Midnight to 8:00 A. M.

Effective October 16, 1960, the carrier changed two car inspectors, specifically Jack Mauter and Dale Manning, hereinafter identified as the claimants, from the second shift with starting time of 4:00 P. M., to a new shift with a starting time of 6:00 P. M. This new shift, 6:00 P. M. — 2:00 A. M. was placed into effect and the two employes placed on the shift by the carrier without regard to the rules of the agreement which permit no more than three shifts nor were the jobs bulletined as per the requirements of the agreement.

This dispute was handled in accordance with the agreement and was appealed to Mr. E. J. Conlin, Staff Officer — Labor Relations, on October 21, 1960.

2. The agreement does not require that all employes on the same shift start work at the same time.
3. The exceptions allowed under paragraph (d) of Rule 3 must be those outside the 1½ hour periods, to give that paragraph a meaning.
4. Although Rule 3 is clear and unambiguous in support of Carrier's position here, several former cases and the manner in which they were disposed of, proves beyond question that this claim is invalid.
5. Since there was no new position, vacancy or change of shift involved, it was not necessary that these jobs be bulletined.

For the reasons expressed above, this claim must 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 claim in this appeal arises from the following facts. At Denver, Colorado, prior to October 16, 1960, the Carrier maintained three shifts of car inspectors, as follows: 8 A. M. to 4 P. M. — 6 men; 4 P. M. to 12 Midnight — 8 men; Midnight to 8 A. M. — 4 men. On the date mentioned, the hours of the two junior second shift men, who are named as claimants herein, were changed to 6 P. M. to 2 A. M. This was done after such proposal had been discussed with the Local Chairman of the Carmen's Organization, who would not agree to a change in the starting time of any of the men, and also following a written notification on October 13, 1960, by the Master Mechanic pursuant to Rule 3 (d) of the agreement between the parties.

The reason for this variation in hours, as explained when the matter was discussed with the Local Chairman, was to meet service requirements, in that a change in freight schedules made the work of the inspectors very heavy around midnight and thereafter, thus necessitating extra aid for the four men on the midnight shift. This change in assignment was appealed, as permitted by Rule 3 (d), directly to the Labor Relations Office of Carrier by the General Chairman without the necessity of following the procedure set forth in Rule 30. But, in that direct appeal, there was no challenge offered to the effect that service requirements did not make necessary the change in hours of the new assignment, this being the only ground expressly set forth in the rule upon which the matter may be appealed. However, this irregularity in the procedure may be disregarded in view of our conclusion when dealing, upon the merits, with the question raised by this controversy.

The claimants named herein, Car Inspectors Jack Mauter and Dale Manning, have since moved to other jobs, which made it necessary to bulletin both of these positions to fill the vacancies; accordingly, the parties agree

that part 2 of the instant claim is moot. However, with reference to continuance of these positions, the Organization maintains such hours constitute a violation of Rule 3 in that, although said rule in paragraph (c) permits varying the starting time of men on the second shift as much as an hour and a half, to wit between 2:30 and 4:00 P. M., they may not work past midnight under the provisions of that same paragraph (c) which says the third shift "shall not be earlier than the close of the second shift nor later than 12:00 Midnight."

Further on behalf of Claimants, it is argued that "exceptions" under (d) must still be within the hour and a half limits prescribed by (c); therefore, that starting a shift at 6 P. M. is nevertheless a violation of the rule because (c), as above mentioned, requires that the 3rd shift must start not earlier than the close of the 2nd shift nor later than 12 midnight. But this argument, according to Carrier, gives no validity whatsoever to paragraph (d); that the agreement does not prohibit some of the 2nd shift employes from working during the same time as 3rd shift employes and that the prohibition for which the Organization contends is not stated in the agreement, nor can it be reasonably implied.

The awards cited by the parties, while dealing with somewhat similar questions and principles, nevertheless concern such different rules and involve such different fact situations that they are of little aid in resolving the problems here presented, which arises under other rules of very definite application.

Carrier insists that, as an allowable exception to the rule, such as provided by paragraph (d) of Rule 3, employes may start on a shift outside of the one and one-half hour periods specified in paragraph (c) of said rule; that, were this not so, there would be no need for a paragraph such as (d).

With this conclusion we agree. The Organization admits that paragraph (c) provides for variable starting times within said one and one-half hour periods, but says further variation than that is not authorized under the exceptions provided by paragraph (d). Such interpretation leaves paragraph (d) devoid of meaning as it would permit nothing by way of an authorized "exception" to paragraph (c) which is not already possible under said paragraph.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1963.