Award No. 4361

Docket No. 3984

2-IT-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That Carman A. Jones and J. Leicht, and Carman Helper W. R. Pullen were improperly paid for changing shifts after their jobs were abolished at Roxana, Illinois.

2. That accordingly, the Carrier be ordered to additionally compensate each in the amount of four (4) hours at the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carmen A. Jones, J. Leicht, and Carman Helper W. R. Pullen, hereinafter referred to as the claimants, were employed at the Roxana, Illinois repair track, with working hours 7:00 A. M. to 3:00 P. M. by the Illinois Terminal Railroad, hereinafter referred to as the carrier.

Due to rearrangement of forces, their jobs were abolished at the close of the day July 29, 1960. This resulted in their being compelled to change to another shift since there were no jobs available on a 7:00 A. M. to 3:00 P. M. shift. On date of August 1, 1960 A. Jones changed to Job No. 463 which works 4:00 P. M. to 12:00 P. M. at Roxana, Illinois. On date of August 8, 1960 W. R. Pullen changed to the 8:00 A. M. to 4:00 P. M. shift at Federal Shops. On date of August 16, 1960 J. Leicht changed to Job No. 458 working 3:00 P. M. to 11:00 P. M. at Wood River, Illinois. They were only allowed the straight time rate for the changes made.

Roxana, Illinois, Wood River, Illinois and Federal Shops are all within Seniority District No. 3 where the claimants hold seniority.

This dispute has been handled with the carrier officials up to and including the highest officer so designated by the company, with the result he has declined to adjust it.

agreement between the parties, they are entitled to time and one half for a change of shift.

The claimants at the time of the abolishment of their positions at Roxana on July 29, 1960, were working the first shift, starting time 7:00 A. M. Their seniority entitled them to take positions at Federal Shops on the first shift, starting time 8:00 A. M. Two of the claimants, A. Jones and J. Leicht, elected to take positions at Wood River and Roxana on the second shift. The third claimant W. R. Pullen exercised his seniority rights to a first shift job at Federal, starting time 8:00 A. M.

In conference the organization has never denied that these men could have all gone to the first shift at Federal. Rule 2 of the agreement between the parties defines first shift as starting not earlier than 7:00 A. M. nor later than 8:00 A. M.

The organization contends that claimants are entitled to time and one half under the provisions of Rule 13, Change of Shift. Since claimants were working the first shift at Roxana prior to the abolishment of their positions and could have exercised their seniority rights to positions at Federal on the first shift, Rule 13 does not apply and there is no basis to their claims.

There is no proper support for their claims and carrier respectfully requests that it 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 waived right of appearance at hearing thereon.

The Claimants A. Jones and J. Leicht were employed as carmen and the Claimant W. R. Pullen was employed as a carman helper at the Carrier's Roxana (Illinois) repair track. They were regularly assigned to the first shift with working hours from 7:00 A. M. to 3:00 P. M. Effective as of July 29, 1960, the Carrier abolished the operation of said repair track. On the basis of their seniority rights, the Claimants were entitled to take positions on the first shift at the Carrier's Federal (Illinois) shops, a distance of about six miles from Roxana, with working hours from 8:00 A. M. to 4:00 P. M. Pullen did so but Jones took a position on the second shift at Roxana with working hours from 4:00 P. M. to 12:00 Midnight and Leicht took a position on the second shift at Wood River, Illinois, with working hours from 3:00 P. M. to 11:00 P. M. They were paid the applicable straight time rate for the first shift worked in their new assignments. Roxana, Federal, and Wood River are in the same seniority district in which the Claimants hold seniority rights.

They filed the instant grievance in which they asserted that they should have been paid at the rate of time and one-half for the first shift worked in their new assignments. They requested compensation in the amount of four hours each at the pro rata rate. The Carrier denied the grievance.

In support of their claim, the Claimants primarily rely on Rule 13 of the labor agreement which reads, as far as relevant, as follows:

> "Employes changed from one shift to another will be paid overtime rates for the first shift of each change."

1. The law of labor relations is firmly settled that a labor agreement, as an instrument of industrial and social peace, should be interpreted and applied broadly and liberally, not narrowly and technically, so as to accomplish its evident aim and purpose. See: Awards 3954 and 4130 of the Second Division and references cited therein. Trivial deviations or those lacking in substance will generally be disregarded under the universally recognized **de minimis** rule in the interest of flexibility and workability. Any other approach would be bound to convert a labor agreement from an instrument intended to promote industrial harmony into a source of continuous irritation and excessive litigation, and thereby, deprive it of its effectiveness and vitality. Substantial justice is done by ignoring minimal and immaterial deviations which could, in a strictly technical sense, be regarded as a violation of the agreement. See: Arbitration Award in re Ridgway Color and Chemical Co., 61-1 Labor Arbitration Awards (Commerce Clearing House, Inc.) No. 8065, pp. 3323, 3325 (1960).

Applying the above principles to this case, we have reached the following conclusions:

Prior to the abolishment of their positions at Roxana, the three Claimants were assigned to the first shift with working hours from 7:00 A.M. to 3:00 P.M. After their positions were discontinued, their seniority rights entitled them to take positions on the first shift at Federal with working hours from 8:00 A.M. to 4:00 P.M. The only difference in the working hours was that the first shift at Federal started and ended one hour later than the one at Roxana. This difference is so slight and inconsequential that it must be disregarded under the **de minimis** rule. Completely identical shift hours are not justified by the realities of working conditions. Consequently, we are of the opinion that the regular working hours of the first shifts at Roxana and Federal were substantially the same. Our opinion is supported by Rules 2, 3, and 4 of the labor agreement which explicitly provide that the first shift shall start not earlier than 7:00 A.M. nor later than 8:00 A.M. Thus, the parties themselves have recognized that a difference of one hour in the starting time of the first shift does not mean a material change in shifts. It follows that no appreciable change in shifts within the contemplation of Rule 13 was involved when the Claimant Pullen transferred to the first shift at Federal and that none would have been involved if the Claimants Jones and Leicht would also have done so. Instead, Jones and Leicht chose on their own volition to transfer to other shifts. Under these circumstances, we hold that none of the Claimants is entitled to the premium pay provided in Rule 13.

2. The Claimants contend, further, that "the Carrier has recognized for years that change of shifts as submitted in this dispute come under the provisions of Rule 13" (Organization's submission brief, p. 3). In support of said contention, they have referred us to the undisputed fact that the Carrier voluntarily settled a similar claim in 1951. Apart from the fact that a single instance does not establish a binding practice, the record shows that the Carrier made that settlement "with the understanding that it was without prejudice to other cases of a similar nature" (Carrier Exhibit "A"). Accordingly, the 1951 settlement is of no probative value and in no way prejudices the Carrier in this case. Our attention has not been called by the Claimants

to a representative number of specific instances from which we could reasonably conclude the existence of a long-continued and consistent practice well-known to and generally accepted by all interested parties. To demonstrate the existence of a binding rule to govern the rights of the parties, past practice must more adequately exhibit mutual understanding than the record here reveals. See: Awards 4016, 4097, 4100, and 4129 of the Second Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4361

The law of labor relations, set forth in great detail in the findings of the majority, may be applicable in arbitration proceedings but one of the basic principles laid down in the Railway Labor Act as a foundation for sound labor relations on the railroads is that "The relations are to be governed not by the arbitrary will or whim of the management or the men, but by written rules and regulations mutually agreed upon and equally binding on both." (See First Annual Report of the National Mediation Board)

The findings and award of the majority have permitted the carrier to evade its obligation to apply Rule 13:

> "Employes changed from one shift to another will be paid overtime rates for the first shift of each change."

said rule having been mutually agreed upon by both parties to the dispute.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink