

**Award No. 4450**

**Docket No. 4198**

**2-MP-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 2, on January 6, 1961 when in addition to the three (3) shift operation, they added three (3) additional shifts at Kansas City, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate the following employees for January 6, 1961 and until the violation is corrected:

(a) 2 hours at the punitive rate for first shift car inspectors R. Dodge, J. Everard and J. Munah between the hours of 7:00 A. M. to 8:00 A. M. (1 hr.) and 3:00 P. M. to 4:00 P. M. (1 hr.);

(b) 2 hours at the punitive rate for second shift car inspectors H. Sullivan, F. G. Kaiser, F. C. Mullins, A. C. Sharp between the hours of 3:00 P. M. to 4:00 P. M. (1 hr.) and 11:00 P. M. to 12 Midnight (1 hr.);

(c) 2 hours at the punitive rate for third shift car inspectors C. E. Campbell, M. Howell and J. Louchs between the hours of 11:00 P. M. to 12 midnight (1 hr.) and 7:00 A. M. to 8:00 A. M. (1 hr.).

**EMPLOYES' STATEMENT OF FACTS:** The above listed carmen, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, in the train yards at Kansas City, Missouri, and on January 6, 1961, in addition to a three (3) shift operation starting at 7:00 A. M., 3:00 P. M. and 11:00 P. M. three (3) additional starting times were added—8:00 A. M., 4:00 P. M. and 12 Midnight, and the men affected (Claimants) are as follows:

**FIRST SHIFT — CHANGED FROM 7 A. M. to 3 P. M. to 8 A. M. to 4 P. M.:**

Car Inspectors R. Dodge, J. Everard, J. Munah

"Our function is to determine if the existing rules of the agreement have been violated. We have no power to write rules for the parties."

Applying that award to this dispute, your Board must find that the carrier has not violated the Rule 2 (d) of the agreement on this property in having all of the men on the same shift in the train yard at Kansas City commence work within the permissible starting time cycle. Rule 2 does not require the Carrier to have all of the men on the same shift commence work at the same time but may meet service requirements by having the men on a shift commence work at various times within the starting time cycle.

This claim is not supported by the rule relied on and is entirely lacking in merit and 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 employes assert that the Carrier is violating Rule 2 of the applicable agreement by having some of the car inspectors state work on the first, second and third shift at 7:00 A. M., 3:00 P. M. and 11:00 P. M., respectively while other car inspectors start work on each shift one hour later than the times mentioned above. It is not disputed that the Carrier instituted a change in the claimant car inspector's working hours effective January 6, 1961. The employes ask that they be paid for 2 hours at the punitive rate, for each day which they have worked since January 6, 1961.

The Carrier alleges that the Agreement does not require that it have all employes on the same shift commence work at the same time but it may have employes commence work at any time within the permissible time cycle. In support of its position the Carrier reports the history of the negotiation of the rule. The employes do not deny the accuracy of that history. The Carrier also relies upon Award No. 758 of this Division, to give weight to its interpretation of the Agreement.

Unless prior Awards are determined to be palpably erroneous it is the practice of this Board to follow them in order to maintain a continuity that is of assistance to the parties and the Board in resolving disputes.

On April 20, 1942, this Division, in Award #758, having before it the same essential facts and the identical parties, determined that the working arrangement on the property was such that the Carrier could adjust the shift starting time of designated employes to fit its operating requirements, provided the adjustment in starting time was within the one hour permissible time cycle.

Because the employes point to no new or additional evidence from that which their organization submitted to this Division in Award #758 to sustain their position, and because the Carrier's submission herein reviews the past

negotiations of the parties and establishes that it has not restricted or limited its right to adjust the starting time of certain employes within the permissible time cycle, we believe that the claim of the employes is without merit.

In keeping with the findings and decision of Award #758 and for the reasons given herein the claims must be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST. Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.

#### DISSENT OF LABOR MEMBERS TO AWARD 4450

The majority is erroneous in basing its findings on Award 758. Award 758 dealt with one and two shifts whereas the present case deals with three shifts and Rule 2(d) of the governing agreement requires "Where three shifts are employed, the starting time of the first shift will not be earlier than 7:00 A. M. nor later than 8:00 A. M., and the starting time of the other shifts will be regulated accordingly \* \* \*" There is no provision in the agreement permitting lap shifts. The majority has upheld the carrier in arbitrarily changing the working conditions and evading the provisions of Rule 2(d).

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink