

Award No. 4779

Docket No. 4691

2-NYC-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE NEW YORK CENTRAL RAILROAD
(Southern District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That effective July 6, 1962, the carrier abolished the established working hours on the second shift at St. Louis Terminal (Car Department) which consisted of 8 hours each day from 3:30 p.m. to 12:00 Midnight, 30-minutes lunch period included, and arbitrarily established a schedule consisting of 8 hours each day from 5:00 p.m. to 1:30 a.m., 30-minute lunch period included, in violation of current agreement.

2. That the Carrier compensate the claimants, electricians Glen Sack and W. W. Pemberton one and one-half (1½) hours at straight time rate for the period from 3:30 P.M. to 5:00 P.M. for each working day from July 6, 1962 to May 21, 1963 inclusive.

3. That the carrier compensate the same claimants three-quarter (¾) hours at straight time rate for the period from 12:00 Midnight to 1:30 a.m. for each working day from 'July 6, 1962 to May 21, 1963' the difference between the straight time rate paid and the overtime rate.

EMPLOYEES' STATEMENT OF FACTS:

1. Prior to July 6, 1962 the established working hours on the second shift at the St. Louis Terminal were 3:30 p.m. to 12:00 Midnight, lunch period included.

2. On July 2, 1962 the carrier posted a bulletin abolishing the established working hours, effective July 6, 1962.

3. On the same day, July 2, 1962, the carrier posted a bulletin establishing a shift with working hours of 5:00 p.m. to 1:30 a.m., lunch period included.

No additional compensation is due them under the schedule rules. Having been fully compensated for all services performed, they are estopped from claiming time for work not performed and the claim should be denied.

When this case was discussed on the property, the employees were unable to cite any rule 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 M.K.T. Railroad where no effort was made by the Carrier to contact the local organization as to any intended change in starting time, the claims for damages because the carrier had placed changed starting times into effect, could not be maintained. This Award is No. 2722 (Referee D. E. Ferguson), cited herein before, and it was stated in the Findings:

"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."

CONCLUSION

The carrier has established that there has been no violation of the applicable agreement, and that the claimants are not entitled to the compensation which they claim.

The carrier respectfully requests your board deny the claim of the employees.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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. Rule 2 (a) provides in part:

"The starting time of any shift shall be arranged by mutual understanding between the local officer and the employees' committee, based on actual service requirements."

It appears that on June 29, 1962 the General Foreman at the St. Louis Passenger Station met with the Local Chairmen of the carmen and the sheet metal workers to discuss a proposed change in the starting time of the second shift from 3:30 P.M. to 5:00 P.M. The Local Chairman of the electricians was not notified of that meeting because it was his rest day. On the following day he was informed by the General Foreman that the change was going to be made and that he could protest if he wished.

We have previously interpreted such rules as permitting the Carrier to establish the starting time on the basis of actual service requirements,

if no agreement is reached after discussion in good faith. The exchange between the General Foreman and the Local Chairman of the electricians, which we find to have occurred in this case, was not a good faith discussion of a proposed starting time change, but an ultimatum. We conclude that the claim should be sustained.

It is shown that claimant Sack left the service of the Carrier on December 22, 1962, so his claim terminates at that date.

AWARD

Claim sustained as limited in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October, 1965.