

Award No. 5178

Docket No. 4943

2-B&O-CM-'67

**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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

(1) The Baltimore & Ohio Railroad Company, hereafter referred to as the Carrier, unilaterally changed the quitting time thereby extending the tour of duty one-half hour, on the second shift at their DuBois Car Shop, DuBois, Pa.

(2) That the tour of duty of the second shift be changed back to eight consecutive hours with pay for the lunch period and the following named Carmen and Carman Helper, hereafter referred to as the claimants be compensated for one-half hour each day at the penalty rate for being held in excess of the eight hours:

Joseph Kot	James H. Johnson	Clarence Benninger
Joseph Cammarata	Raymond Sedor	Thomas Minns
George Liddle	Joseph Getch, Jr.	Robert Hamilton
Enok Melesky	Edward C. Wadding	John Kotuloski
Ted Anderson	Leon Labenna	John Hoover
Robert Sprangle	Thomas Kirkwood	Richard Kareski
Lon D. White	Richard Heffner	Emery Bernaducci
		Michael Gresak

Carman Helper Edward Zbieg

(3) As this was a continual claim and the assignments have been changed from time to time through the normal operation of the shop and exercise of seniority, we ask that all individuals who have been assigned or worked the second shift and were required to remain the additional half hour each day, be compensated for and the said one-half hour at the penalty rate of pay for each day.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to April, 1953, the DuBois Car Shop was located on Brady Street approximately  $\frac{3}{4}$  mile from the Back Shop. On or about April, 1953, the DuBois Back Shops and Roundhouse were closed down and converted into a Car Shop. Work was continued in the old Car Shop to a limited degree until the latter half of 1961, when the build-

overtime distributed among them equally as provided in Rule 8 of the controlling agreement. The record is clear that the carrier attempted to have regularly assigned carmen painters in the Locomotive Department perform the specific work involved but disregarded the carmen painters in the Car Department. Thus there was a violation of the agreeemnt \* \* \*."

In a word, this Board ruled that by reason of the application of the Seniority Rules, specifically Rule 28, so far as employees in the Carmen's Craft were concerned, all such employees were on a common seniority roster and the Rules Agreement applied with equal force to both the Car and Locomotive Departments. In fact, the ruling by this Board directly rejected the Carrier's argument as to the separation or line of demarcation between the two Departments at DuBois in favor of a positive acceptance of the Committee's contention that since all employees in the Carmen's Craft at that point were included in the seniority point "DuBois Locomotive Shop, Roundhouse and Car Department," they were properly entitled to work accruing to either or both Departments.

Having prevailed before this Board in Award 1519, the Carmen's Committee now comes before this same labor tribunal asking in effect that the holdings reached in Award 1519 be specifically rejected and overruled. It is of some significance that one of the claimants in Award 1519 was Mr. Michael Mancusco. Mr. Mancusco still retains a position on the current Carmen Painters' roster at DuBois.

**CARRIER'S SUMMARY STATEMENT:** In summary the Carrier submits that this Board has already ruled that in the case of those employees in the Carmen's Craft at DuBois, there is a common seniority roster and the Rules Agreement embraces the entire facility. Since DuBois has classically been designated as a "back shop," the Committee cannot in reason or logic now attempt to argue the separateness of the two Departments without specifically rejecting all those arguments made and accepted by this labor tribunal in Award 1519.

Apart from the above, in the past the definition of "back shop" has been construed to mean any facility engaged in the new construction, reconstruction and heavy repair work. The cars handled in the shop at DuBois fall under this category. Over the years in the past this term has been used to cover shops at other location, e.g., Glenwood, Pa., engaged in such work on cars and has by no means been confined solely to work on locomotives. The record shows a period of time, at the very least being nearly two years, when the second shift at the DuBois back shop was advertised from 3:30 P.M. to 12 Midnight and without any protest at all from the Committee in question. In a word, the facility at DuBois properly falls within the definition of the term "back shop" as that term is used and appears in Paragraph (d) of Rule 2 of the Working Agreement. In summary, the Carrier submits that there is no merit to the instant claims and that they should be declined. The Carrier respectfully request this Board so rule and that these claims be declined in their entirety.

Oral hearing is requested.

(Exhibits not reproduced.)

**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.

In this claim it is alleged by the Employes that Carrier violated Rule 2(d) of the Agreement of the parties in having a second shift at the car shop facility located in DuBois, Pa., — which shift was bulletined at 3:30 P. M. to 12:00 Midnight, — without permitting a paid twenty-minute lunch period, but instead having the men on said shift work eight hours exclusive of lunch period. In other words, Claimants insist that their work at said car facility is covered by the first sentence of said Rule 2(d), whereas Carrier maintains that the second sentence hereof governs the situation here presented.

We have considered at length the facts and argument presented to us by the parties and the awards cited as authority, noting particularly the discussion concerning Award 1519 of the Second Division, wherein the parties and the locale were the same as here. As a result, we are of the opinion that the Car Department shop at DuBois, Pa., is embraced by the term "back shop" as used in Rule 2(d) of the applicable Agreement and that the claim of Employes here considered may not be sustained.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.