

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk Western Railway Company violated the Current Agreement when it improperly changed the reporting and departing time of the one-shift operation, held by Carmen from 7:00 A.M. - 3:30 P.M. to 5:00 A.M. - 1:30 P.M., with thirty (30) minutes for lunch, effective October 1, 1973.
2. That the Norfolk and Western Railway Company be ordered to additionally compensate Carman R. F. Agee four (4) hours at the pro-rata rate of pay beginning October 1, 1973, for each and every day he has been required to report at 5:00 A.M.

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 employees 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.

Prior to October 1, 1973, Claimant worked as Car Repair Helper and Car Inspector and Repair along a line of road covering a distance of approximately 60 miles, including branch lines with headquarters at Oceana, West Virginia, which was a one-man point and a one-shift operation with hours from 7:00 o'clock a.m. to 3:30 o'clock p.m. On or about January 26, 1973, Claimant was instructed to report approximately 1½ hours early or 5:30 o'clock a.m. Claimant was allowed four (4) hours at the pro rata rate of pay in addition to his regular 8-hour shift. This practice continued until October 1, 1973. On September 24, 1973, Claimant was instructed, effective October 1, 1973, that his reporting and departing time was changed from 7:00 o'clock a.m. to 3:30 o'clock p.m. to that of 5:00 o'clock a.m. to 1:30 o'clock p.m. with 30 minutes for lunch. Carrier relies on Rule 120 to justify its action in this dispute. Rule 120 is as follows:

"At outlying points where a small group of men is employed for inspection and repair work and where requirements of the service justifies such an assignment, employees may be assigned to work 8 hours within a spread of 12 hours. Time worked in excess of 8 hours within the 12-hour spread will be paid for at overtime rate."

This Board finds that the above quoted Rule 120, the intermittent service rule, contains no exception or limitations. In the usual intermittent service rule, an employee goes home or is off duty during the 8-hour period. Also, Rule 120 does not specifically set out a starting time. Therefore, Claimant is obviously covered by either Rule 2, which provides for a starting time not earlier than 7:00 o'clock a.m. nor later than 8:00 o'clock a.m., or he is covered by Rule 13, which provides for a starting time not earlier than 6:00 o'clock a.m. nor later than 8:00 o'clock a.m. In this instance, Claimant is regularly assigned to road work; he performs that service every day; and this is his main assignment and so acknowledged by Carrier in the Record. Road Service Rule 13 provides that an employee will be paid continuous time from the time leaving home station until his return whether working, waiting or traveling, exclusive of meal. Therefore, this claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of January, 1977.