

The Second Division consisted of the regular members and in addition Referee Bernard Cushman when award was rendered.

Parties to Dispute: { System Federation No. 109, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

- (a) That the Carrier violated Rule 4 of the effective agreement when, commencing February 1, 1977, it arbitrarily changed the working conditions of Carmen Craft employees assigned to work in the ConRail Repair Facility, Reading, Pennsylvania.
- (b) That accordingly the Carrier be ordered to reimburse each Carmen Craft employee assigned to ConRail Repair Facility, Reading, Pa., twenty minutes compensation for each day of said violation; claim to commence February 1, 1977, and to continue for all subsequent dates up to and including date the violation is corrected.
- (c) Claimants in subject case will be identified at time of settlement. Further, the organization requests that the Carrier furnish the General Chairman, on a monthly basis, the names and other information pertinent to all employees (either newly hired or transferred from other locations) assigned to work at ConRail Repair Facility, Reading, Pa.; and further, Carrier shall maintain records and notify the General Chairman of the names of employees who may become adversely affected by fluctuation of forces at ConRail Repair Facility, Reading, Pa., subsequent to February 1, 1977.

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 waived right of appearance at hearing thereon.

The issue here is whether employees represented by the Organization who are assigned to work in the Carrier's Repair Facility at Reading, PA are entitled to a twenty minute paid lunch period. Prior to April 1, 1976, the

former Reading Railroad operated a Repair Facility which contained two separate facilities, the Locomotive Shops and the Car Shops. The Locomotive Shops were referred to as engine shops or enginehouse territories and employees who worked therein worked on a three shift basis and were accorded a twenty minute paid lunch period. The Car Shops were composed of the Wheel Shop, the Passenger Car Repair Shop, located in one building and the Freight Car Repair Shop which was located in another building. These Shops operated on less than a three shift operation and the employees there received a thirty minute unpaid lunch period.

On April 1, 1976, the aforesaid facilities were taken over by Conrail, the Carrier here, and were named ConRail Repair Facility. The Reading Railroad became part of the Consolidated Rail Corporation and the two maintenance areas came under the supervision of one General Superintendent. The Locomotive or Enginehouse area continued to operate on a three shift basis. The Car Shop area, or shops, which operated on a one or two shift basis, continued to so operate. On April 1, 1976, however, the Conrail General Superintendent issued an order changing the meal period arrangements so that the employees working in the Car Shops received a twenty minute paid meal period rather than the thirty minute non-paid meal period previously in effect.

On October 26, 1976, the Carrier notified the General Chairman of the Organization that the lunch period which had been placed in effect on April 1, was not in accordance with the provisions of the Schedule Agreements and after consultation with the Organization, the Carrier notified the Organization and posted a notice dated January 17, 1977, on appropriate bulletin boards, stating what it claimed was the erroneously allowed paid lunch period would be terminated effective January 24, 1977, and after further discussion with the Organization the return to the unpaid lunch period became effective February 1, 1977.

The applicable Schedule Rules are Rules 2, 3 and 4 of the Schedule Agreement, which read as follows:

"Rule 2 - One Shift

At the main shops and engine houses where on shift is employed, the starting time shall not be earlier than 7:00 A.M. or later than 8:00 A.M., unless otherwise agreed upon. The time and length of lunch period, without pay, shall be subject to mutual agreement."

"Rule 3 - Two Shifts

At the main shops and engine houses where two shifts are employed, the starting time of the first shift shall be governed by Rule 2, and the second shift shall start not later than 8:00 P.M.

"The spread of each shift shall consist of eight consecutive hours, excluding the lunch period, the length of which shall be subject to mutual agreement and shall not be paid for."

"Rule 4 - Three Shifts

At the main shops and engine houses where three shifts are employed, the starting time of the first shift shall be governed by Rule 2, and the starting time for each following shift shall be regulated accordingly. The spread of each shift shall consist of eight consecutive hours, including an allowance of twenty minutes for lunch with pay within the limits of the fifth hour."

This dispute is substantially identical with the dispute that was submitted to this Division by the Electrical Workers. (See Award No. 7947). The facts are substantially identical. Here, as in that case, the Organization argues that the twenty minute paid lunch period was proper because the activities of the employees now come under the head of the ConRail Repair Facility with a single General Superintendent. The Organization also argues that the Car Shops and the Locomotive Shops have been co-mingled in some fashion and claim that the Locomotive Shop was discontinued. The Carrier denies that the former operations are still not being performed by the employees and denies that the Locomotive and Freight and Passenger Car Repair operations are not performed as they were previously performed. The Organization also argues that because some employees who work on a third trick operation receive a twenty minute paid meal period and part of the facility, therefore, receives a paid lunch period, all employees who are employed at the facility must receive the paid lunch period. In effect, the Organization argues that if one section of a Shop works on a three trick basis and therefore receives a twenty minute paid lunch period, those who work in another section of the Shop on a one or two trick basis must receive a paid lunch period.

The Board takes cognizance of the findings of this Division in Award No. 7947 that the Organization did not have a solid basis for its claim and is of the same view. The crucial question is whether there has been a change in working schedules from a one or two shift arrangement to a three shift arrangement, and as to the employees here involved no such showing has been made. The Organization misreads Rule 4 in its contention that where the Carrier maintains a third trick operation within a part of the Shop facility, Rule 4 applies to all employees regardless of the number of tricks in the operations in which the employees perform their function.

As this Board pointed out, the Organization's claim that the changes of April 1, 1976 and the pronouncement of the General Superintendent created a single area and thus made the provisions of Rule 4 applicable to all employees is not tenable. As Referee Marx pointed out, the change by the General Superintendent of April 1, 1976, was not undertaken as a requirement under the Agreement between the parties or by joint consultation

and agreement between representatives of the Carrier and the Organization empowered to make such changes. The Board held that even where a change in practice was instigated by a Supervisor, under the circumstances where the change was in effect approximately ten months, that change cannot defeat the clear language of the Agreement.

We follow the ruling in Award No. 7947 of this Division that, "The acquisition of the Reading Railroad by a new owner and the installation of a common supervisory official over several functions does not disturb the degree of pre-existing benefit entitlements to the affected employees. Nor are the applicable Rules modified in their meaning and applicability by the unilateral and temporary decision of a Carrier official."

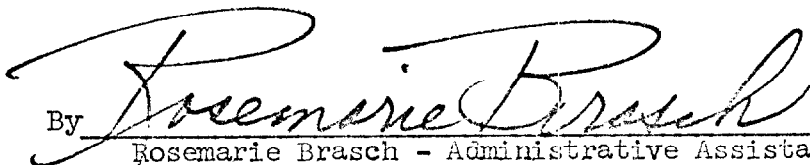
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.