

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
( Terminal Railroad Association of St. Louis

Dispute: Claim of Employee:

That the Terminal Railroad Association of St. Louis violated the Controlling Agreement, particularly Rules 2, 5, and the National Agreement of August 21, 1954, Article V, when it arbitrarily abolished Machinist Helper S. Ruelas' position at Brooklyn Illinois, and subsequently readvertised it with different hours of assignment.

That accordingly the Carrier be ordered to compensate Claimant one (1) hour per day at straight time rate of pay from 7:00 A.M. to 8:00 A.M. and one (1) hour per day at overtime rate of pay from 3:00 P.M. to 4:00 P.M. beginning August 4, 1980 and continuing until the violation of the Agreement is corrected.

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.

From 1965 until August 1, 1980, Claimant occupied a Machinist Helper position in the Locomotive Department and his shift began at 7:00 a.m. However, during this period, Claimant actually worked from 6:00 a.m. to 4:00 p.m. daily. The Carrier compensated Claimant at the overtime rate for the hour he routinely worked prior to his regular shift as well as the additional hour he worked from 3:00 p.m. to 4:00 p.m. daily. During the overtime hours, Claimant transported employees to and from the shop. In 1980, the Carrier decided to change the hours and job content of of Claimant's position. By a bulletin dated July 28, 1980, the Carrier abolished his position and created a new Machinist Helper position with assigned hours from 8:00 a.m. to 4:00 p.m. Claimant bid for and was awarded the new position. The practical effect of the abolition of his previous position and the establishment of the new position was to eliminate Claimant's two hours of daily overtime. In the new position, Claimant was assigned only to chauffeur employees from the shop (since their shifts concluded at 3:00 p.m.). All the other craft employees in the shop worked from 7:00 a.m. to 3:00 p.m. though at least one Machinist commenced work at 6:00 a.m. On August 5, 1980, Claimant initiated this claim and he seeks one hour of straight time pay and one hour of overtime pay for each day from August 4, 1980 until the alleged Agreement violation is corrected. The Organization alleges the Carrier has violated Rules 2 and 5 of the controlling Agreement.

At the onset, the Organization also urges us to summarily sustain this claim as presented because the Carrier purportedly improperly denied the claim (so far as it is premised on Rule 5) and the Organization cites Article V of the August 21, 1954 National Agreement to support its request. After carefully considering the Superintendent's October 13, 1980 letter denying the claim, we conclude the Carrier satisfied the Article V requirements. The Carrier clearly took the position that Rule 2 permitted its action (regardless of the applicability of Rule 5).

This dispute is governed by the application of Rules 2 and 5 of the controlling agreement which state:

"RULE 2  
ONE SHIFT

When one shift is employed, the starting time shall be not earlier than seven o'clock (six o'clock in the Maintenance of Way Department) not later than eight o'clock (eight-thirty in the Passenger Car Department). The time and length of the lunch period, on the employees' own time, shall be arranged by mutual agreement." (Emphasis added.)

"RULE 5  
UNIFORM COMMENCING AND QUITTING TIME

The time established for commencing and quitting work for all men on each shift in either the Car or Locomotive Department shall be the same at the respective points, except:

1. Where three shifts are worked by running repair forces and two shifts by back shop forces, the quitting time of the second shift of back shop forces will be governed by the provisions of Rule 3.
2. Three eight-hour shifts may be established under the provisions of Rule 4 for the employees necessary to the continuous operation of Power Houses, Millwright Gangs, Heat Treating Plants, Train Yard, running repair and inspection forces without extending the provisions of Rule 4 to the balance of the shop force.
3. Deviations necessitated by service requirements will be met by mutual action." (Emphasis added.)

The Organization argues that even though Rule 2 gives the Carrier discretion to set the time for commencement of the Locomotive Department day shift, once the Carrier establishes a starting time that time must be uniformly applied to all shop employes including Claimant. The Carrier contends Rule 2 provides it with flexibility in assigning Claimant a starting time (provided that time is between 7:00 a.m. and 8:00 a.m.). The Carrier also argues that if Rule 5 is applicable, the Organization is barred from complaining because it acquiesced in an irregular shift for this Claimant for many years.

In this case, while Claimant routinely began working one hour before employes in the Locomotive Department for fifteen years, his regular straight time shift

commenced at 7:00 a.m. which was identical to the starting time of virtually all other Locomotive Department workers. Rule 5, in unequivocal language, mandates that all men in the Locomotive Department shall start their shifts at the same time though the Carrier (pursuant to Rule 2) has the discretion to set the uniform starting time within certain constraints. Claimant's prior ten hour working day was consistent with Rule 5 since his regular shift actually started at 7:00 a.m. and he was properly compensated for his overtime work. While we recognize the Carrier's right to assign work and its legitimate objective of limiting overtime, the Carrier's right can be restricted by the express terms of Rule 5. Second Division Award No. 6760 (Eischen). Furthermore an alleged past practice may not alter or vary the clear and unambiguous terms of the collective bargaining agreement. This Board must respect the parties negotiated agreements. Here, the Carrier assigned Claimant a starting time which was different from other Locomotive Department employees which is contrary to Rule 5.

Rule 5 does set forth three exceptions. However, the Carrier has not come forward with evidence that this situation falls within any of the exceptions. The record contains no evidence that the Carrier first attempted to adjust Claimant's starting time by "... mutual action".

The Organization's requested remedy is excessive. Claimant is entitled to one hour of straight time pay for each day Claimant started work at 8:00 a.m. from August 4, 1980 until the agreement violation is corrected.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.