Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10055
SECOND DIVISION Docket No. 9906
2-N&W-CM-'84

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

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada
(
( Norfolk and Western Railway Company
(formerly The New York, Chicago & St. Louis Railway Company)

Dispute: Claim of Employes:

1. That the Norfolk and Western Railway Company violated the Rules of the Current Working Agreement and associated Rules; namely, Rule 4 and 6 of Agreement dated October 1, 1952, beginning February 25, 1981, as a result of Award No. 8, 1981 which changed the Buffalo Junction Train Yard working hours from 7:00 A.M. to 3:00 P.M., to 7:00 A.M. to 3:30 P.M., with thirty (30) minutes for lunch period from 12:00 noon to 12:30 P.M.

2. That the Norfolk and Western Railway Company be ordered to compensated (sic) all awardees of Award No. 8, 1981, dated February 19, 1981, and all future awardees and assignees from the date of February 5, 1981, two-thirds (2/3) of an hour at the time and one-half rate of pay for each day they work thereafter, until adjusted.

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 employes 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.

Rules 4 and 6 of the applicable labor agreements are cited by the Brotherhood in support of the claim. These rules are set forth below:

"RULE 4 - STARTING TIME

"The time established for commencing and quitting work for all men on each shift shall be the same except as may be agreed to between the General Officers and the General Committee of the Employes in cases where necessary to cover peak service conditions. Shifts in the roundhouse, locomotive shop, train yard and coach yard, and car repair shifts, may be independent of each other. The starting time of any shift shall be arranged by mutual understanding between the Local Officers and the Employes' Committee based on actual service requirements.

"Where one and two shifts are employed the time and length of the lunch period shall be subject to mutual agreement.

"Where three shifts are employed the spread of each shift shall consist of eight consecutive hours, including an allowance of 20 minutes for lunch."

"RULE 6 - OVERTIME

"For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis with a minimum of one hour for any such service performed.

"Employes shall not be required to work more than two hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to 30 minutes.

"Employes called or required to report for work, and reporting but not used, will be paid a minimum of four hours at straight time rates.

"Employes called or required to report for work and reporting, will be allowed a minimum of four hours for two hours and 40 minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement.

"Employes will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one hour; the advance period to be not more than one hour.

"Except as otherwise provided for in this rule, all overtime beyond 16 hours' service in any 24 hour period, computed from starting time of employes' regular shift, shall be paid for at a rate of double time."

At the outset, it must be noted that the claim does not name individual claimants but, instead, is a blanket claim for "all awardees of Award No. 8, dated February 19, 1981, and all future awardees from the date of February 25, 1981...".

It is well established by prior awards of the Board that claims for unnamed employees are barred procedurally from consideration as set forth in Award 1439 of the Fourth Division as follows:

> "all claims for grievances must be in writing and specifically name the individal or individuals who have been aggrieved."

Also noted in support of this principle is Award 5423 of the Second Division, as follows:

> "The instant claim does not meet the requirement of having 'easily and clearly identifiable' unnamed claimants. The better practice and procedure in all claims brought before this Board call for a claimant or claimants to be named. To proceed otherwise places an undue burden on the Carrier to check voluminous records, rosters, employment dates and detailed circumstances of each employee in a given class or seniority district. It also places an undue burden on this Board and gives rise to speculation. Therefore, this Board will follow Awards 4166 and 3576 of this division and deny the claim ***."

This claim is related to Award 10054 in that it is based on operations at a small facility operated by the Carrier known as Buffalo Junction. In this case the Brotherhood describes the operation thusly:

> "all the work at Buffalo Junction is performed in the train yard (e.g., inspecting freight cars, upgrading freight cars, etc.)."

In Award 10054, however, the Brotherhood describes the work more fully and shows there are actually two operations in the area; one known as Buffalo Junction where car repair work is performed, and Bison Yard where carmen perform train yard service. The operation is described by the Brotherhood in Docket 9893 as follows:

> "Carmen assigned to positions at Buffalo Junction perform work that is usually performed in a repair track (e.g., applying floor planks to freight cars). Train Yard service is performed by Carmen assigned to positions at Bison Yard."

In describing the changed operational requirements, and efforts to effect agreement with the Brotherhood on the proposed changes in assignments, the Carrier describes its action as follows:

> "On February 12, 1981, General Foreman at the Carrier's Buffalo Terminal facility met with the Organization's Local Chairman and a Committeeman from 1:50 P.M. to 2:55 P.M., for the purpose of discussing a change in the working hours at Buffalo Junction. The working hours were 7:00 A.M. to 3:00 P.M. with a 20 minute paid lunch period and the Carrier desired to change the working hours to 7:00 A.M. to 3:30 P.M. with a non-paid lunch period which would run from 12:00 noon to 12:30 P.M. The jobs affected were shop jobs and the facility affected, Buffalo Junction, is solely owned and operated by the Carrier, as opposed to other facilities at Buffalo Terminal which are operated jointly with ConRail. The change in quitting time was made due to operating requirements caused by train TC03 being called and departing Bison Yard during third shift hours and making a pickup at Buffalo Junction during first shift hours.
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> The Organization's representative would not agree to the changes and said that if the proposed changes were made he wanted the jobs abolished and readvertised. This was done."

Examination of the evidence shows this claim is limited to the shop jobs at Buffalo Junction where only one shift is employed. By contrast, the train yard carmen positions at Buffalo Junction are operated on a three-shift basis with a paid lunch period of 20 minutes included. Rule 4 supports a paid lunch period where three shifts are employed. The rule does not support a claim for a paid lunch period where one shift is employed. It provides only that the time and length of the lunch period shall be the subject of mutual agreement. The record shows the Carrier endeavored to reach agreement with the Brotherhood representatives in the meeting of February 12, 1981, prior to effecting the changes in the assignments in question, but without success.

Examination of the evidence shows also that Rule 6 does not lend support to the claim. That rule covers pay for overtime service. There was no overtime involved in the circumstances reviewed herein. Only if it could be found that Rule 4 was violated could it conceivably be determined that Rule 6 has any application in this case. And since we have found that Rule 4 was not violated there is no basis for the claim under Rule 6.

A labor agreement can be held to restrict a carrier's freedom of action in matters such as covered by this claim only to the extent of specific language limitation in rules agreed to in negotiation between the parties. This principle has been well established in many Board awards and is particularly illustrated by the following awards:

> "Second Division Award 1777:
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> '***It is true that carrier has the inherent right, except as it has limited or restricted itself by the terms of its agreements, to operate its business in a manner it thinks best and this would include the right to determine where it would have its repair work done.'"
>
> "Second Division Award 3630:
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> 'It is a fundamental principle of the employer-employe relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language.'"

Additional precedent for denial of the claim is Award 6895 of the Second Division on a claim involving this same carrier and the same issue as here involved. The claim in that case was stated as follows:

> "1. That the Carrier violated the Rules of the Current Working Agreement when they unilaterally and arbitrarily changed the working hours of all carmen at Buffalo Junction Shops from 7:00 a.m. to 3:00 p.m., to 7:00 a.m. to 3:30 p.m., on March 27, 1972.
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> 2. That the Carrier be ordered to compensate all carmen working in the Buffalo Junction Shop from the effective date of March 27, 1972 from the hours of 7:00 a.m. to 3:30 p.m., instead of bid assignment hours which they worked from 7:00 a.m. to 3:00 p.m., two-thirds (2/3) of an hour at time and one-half for each day they worked thereafter, until adjusted."

In denying the claim in that case the Referee stated:

> "It is well settled that Carrier may determine the way in which the work and operations are to be performed and conducted in the interest of economy and efficiency except to the extent limited by law or by agreement with the representatives of its employes. It is also well established that the provisions of an agreement shall prevail and that past practices does not estop the Carrier or its employes from enforcing a contractual provision at any time. It was not, therefore, a violation of the agreement for the Carrier to institute proceedings for the establishment of a lunch period without pay for the employes here involved. The agreement provides only that the time and length of the lunch period will be by mutual agreement. In prior awards of this Division, we have held that failure to achieve such mutual understanding does not carry with it the power of the Organization to, in effect, veto such changes. Awards 2798 and 4605."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1984.