

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Green Bay and Western Railroad Company

Dispute: Claim of Employees:

1. That the Green Bay and Western Railroad Company violated the provisions of the current Agreement Rule 1, when they forced Carman James Zelzer to start his shift prior to 7 A.M. on the dates of June 27, 28, 29, 30 and July 1, 1983.

2. That the Green Bay and Western Railroad Company be ordered to compensate Carman James Zelzer in the amount of one-half hour's pay for every hour that he was made to work prior to 7 A.M. in order that he not be deprived of the applicable time and one-half rate of pay for the dates of June 27, 28, 29, 30 and July 1, 1983.

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.

The Claimant, a Carman, was employed by the Carrier as a Car Inspector at its facility located at Green Bay, Wisconsin, during the events giving rise to the instant dispute.

There is very little dispute over the facts in this case. Between June 27 through July 1, 1983, the Claimant was required to work one-half (1/2) hour prior to 7:00 A.M. The Carrier paid the Claimant at the straight time rate for the work performed before 7:00 A.M. on the days in question. By refusing to pay the Claimant the time and one-half (1 1/2) rate for such work, the Organization contends that the Carrier violated the Agreement.

In relevant part, Rule 1(a) provides as follows:

"Rule 1(a) Eight hours shall constitute a basic day, and the starting time shall not be earlier than 7:00 a.m. nor later than 8:00 a.m.

The terms of Rule 1(a) are clear and unambiguous. Its meaning is obvious and requires no elaboration. The Carrier acknowledges that Carmen working in the car repair facility have always had a starting time of not earlier than 7:00 A.M.; nor later than 8:00 A.M.

Rule 1(a) has no limitation or restriction. Its terms are not limited to Carmen working in the car repair facility; nor does Rule 1(a) exclude Car Inspectors working in the Train Yard. The express terms of Rule 1(a) are comprehensive and apply to both Carmen working the car repair facility and Car Inspectors working in the Train Yard.

The Carrier claims that on the basis of past practice, Car Inspectors working in the Train Yard have always started at various times to meet the operational needs of the Carrier. In support of its contention, the Carrier has submitted to this Board publications and bulletins which date from 1949 showing that the Carrier has started shifts at different times throughout the day and evening. Such documents were not discussed or considered on the property and thus are not entitled to any weight.

Moreover, concerning the principle of past practice, in Second Division Award No. 9246, the following well established principles were stated:

"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. Furthermore, an alleged past practice may not alter or vary the clear and unambiguous terms of the collective bargaining agreement * * *."

Thus, since Rule 1(a) is clear and unambiguous, a past practice cannot alter or vary its terms.

The Organization is not contending that the Carrier is restricted to one (1) shift. Indeed, the Carrier indicates that it is required to start the first shift between 7:00 A.M. and 8:00 A.M. If the Carrier has a need for other shifts, obviously, it can establish such shifts, as it has done in the past. In this case, the Carrier abolished the third shift position, and started the first shift, to which the Claimant has been assigned to work prior to 7:00 A.M. between June 27 through July 1, 1983.

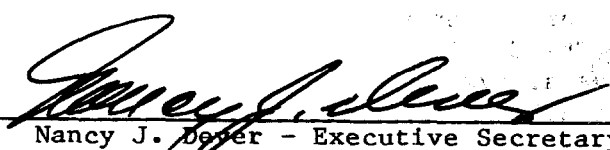
Award No. 10952
Docket No. 10697
2-GB&W-CM-'86

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1986.