

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 2(a) of the Controlling Agreement when they changed the working hours on carman job at Beaumont, Texas, March 7, 1984.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman O. B. Marcantel in the amount of one (1) hour each day, at the straight time from 8:00 a.m. until 9:00 a.m., one hour at time and a half from 4:30 p.m. until 5:30 p.m., a total of 2.5 hours per day beginning March 15, 1984, and continuing until the violation 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 employees 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 at the Carrier's Beaumont, Texas facility, was originally assigned on a shift starting at 7:00 A.M. through 3:30 P.M. On March 14, 1984, the Carrier changed the hours of the Claimant to 9:00 A.M. to 5:30 P.M.

The Organization claims that this action by the Carrier was a violation of Rule 2 (a) of the Controlling Agreement. That Rule reads as follows:

"(a) Where but one shift is employed, unless otherwise provided for, the starting time will not be earlier than 7:00 nor later than 8:00 A.M. or P.M."

The Organization states that no Rule allows a 9:00 A.M. start time and in support of their position, submits Second Division Award 7213.

The Carrier argued that the change was made because of a change at the main customer, which was Dupont Chemical. The Carrier relied on Rule 117, which states:

"Rule 117. One man point - outlying points

(a) A 'one man point' is an outlying point where there is employed one carman days and one nights, or where there is only one carman employed. Carmen stationed at one man points will be paid by the hour and under the rules governing running, repair forces, except where the eight hours constituting a day's work may be worked within a spread of twelve consecutive hours during the period where services are required.

No release and return to duty will be assigned between 12:00 midnight and 5:00 A.M. Overtime will be paid for all hours on duty in excess of the spread of twelve hours."

The Carrier notes that Rule 117 (a) is specific language and Rule 2 (a) is general language and under contract construction, Rule 117 (a) would be controlling. The Carrier cited several cases in support of their arguments, including Second Division Award 6219 and 3918.

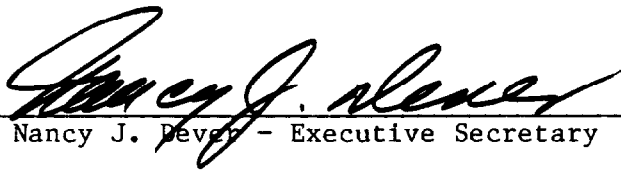
Upon complete review of the evidence, the Board finds Beaumont is a one man point that with respect to starting times, Rule 117 is silent. That Rule allows the Carrier to split shifts in order to cover their change in customer needs. However, Rule 2 (a) clearly states starting times. In this case, the shift must start between 7:00 A.M. and 8:00 A.M. Rule 2 (a) does state that if the Controlling Agreement provides for exceptions in other sections, those would be controlling. Careful reading of Rule 117 (a) shows that this Rule does not contain any start time exceptions to Rule 2 (a). Specific language does govern as in Carrier cited cases. The Rule in Carrier cited Case 6219 states in part ". . . working hours shall be based on service requirements. . . ." In this case 117 (a) does not contain specific language that would govern starting times. Silence does not give the Carrier unlimited authority. Particularly where the operations could have been covered by a split shift as provided in the Rule. Therefore the Claim will be sustained for the duration of the violation, March 14, 1984 to April 2, 1984.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: \_\_\_\_\_

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of August 1986.