

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when the Missouri-Kansas-Texas Railroad Company established an improper fourth shift in the trainyard at Bellmead, Texas, that works 8:00 P.M. - 4:00 A.M., each Monday through Friday.

2. That the Missouri-Kansas-Texas Railroad be required to compensate Carman K. E. Austin for seven and one-half (7 1/2) hours pay at the proper pro rata rate for the dates of September 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, and 19, 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 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 fundamental issue in this case is whether Carrier has the authority to unilaterally establish a fourth shift.

It is undisputed that there was and still is a seven day, 24-hour operation at Bellwood (Waco), Texas, with Carmen on duty working around the clock in three (3) consecutive shifts from 7:00 A.M. to 3:00 P.M.; 3:00 P.M. to 11:00 P.M.; and 11:00 P.M. to 7:00 A.M.

Subsequent to a telephone conference between the Railroad and General Chairman, the parties executed a Letter of Agreement on December 8, 1982, which states in pertinent part:

"...it was agreed that due to an operational problem...the Carrier may establish one position of Lead Carman, working 8:00 P.M. to 4:00 A.M., Tuesday through Saturday with rest days Sunday and Monday. It is recognized that this is a deviation from the Monday through Friday work week set forth in Rule 1, paragraph (f) of Agreement No. DP-315, and in accordance with the required mutual understanding for starting time of shifts set forth in Rule 2, paragraph (a).

It is understood that this agreement may be cancelled by either party with 30 days' advance notice to the other."

Thereafter, Claimant, a furloughed Carman, was assigned by bulletin to the established position of Lead Carman working 8:00 P.M. to 4:00 A.M.

On March 23, 1983, after the new shift position was in effect for five months, the Organization served notice that it wished to cancel the Letter of Agreement. However, the fourth shift was not eliminated until September of 1983, five months later.

The Organization contends the Controlling Agreement was violated when Carrier continued to operate the fourth shift after the Letter of Understanding was cancelled in April, 1983. Organization contends the purpose of the fourth shift was to give Carrier time to address the problem and there was never any intent for the practice to be ongoing or permanent.

The Organization maintains that the Agreement does not provide for any more than three shifts with working hours different from the three 8-hour shifts covering the 24-hour period; and that the work could have been performed by a regular 3:00 P.M. to 11:00 P.M. assignment. Further, Organization contends that Carrier's act of seeking the Letter of Understanding evidences Carrier was aware it would be in violation of the Agreement without express permission to implement such a practice in the first place.

Carrier contends failing to obtain the Organization's cooperation in continuing the existence of the one added position left Carrier with no options of meeting its operational requirements any other way.

Due to No. 3's train arriving in Bellwood about 8:00 P.M. up to 12:00 Midnight, Carrier contends the additional job provided sufficient force to service the train, preventing costly delays and failure to make connections.

Carrier argues there is nothing in the Agreement that prohibits establishing one position with different starting and ending times. Carrier maintains that the necessary duties of the Lead Carman could not be reasonably met in five days, with off days of Saturday and Sunday. Therefore, Claimant regularly worked unique working hours Tuesday through Saturday, which Carrier contends it had the authority to establish, based on actual service requirements.

Carrier further contends there are approximately ten other jobs at the same facility working hours different than the established 8-hour shifts, 7:00 A.M. to 3:30 P.M., for which there is no dispute.

Finally, Carrier asserts there is no basis to award the punitive damages sought in that the Board wholly lacks jurisdiction to make such an award.

The Board has reviewed all the evidence in this case, as well as the numerous decisions that have been cited as support for their positions by both parties to this dispute.

In the instant case, the record shows that Carrier gave prior notice that it was having operational problems and establishing the one position was a solution to that problem. There is no doubt that service demands were heavy considering the facility was a seven day, 24-hour operation.

Although it is the Organization's position that the duties of Claimant could have been performed during a regular 3:00 P.M. to 11:00 P.M. shift, no evidence was presented to support its position.

The Board finds nothing in the Agreement restricts Carrier from establishing a new starting time based on "actual service requirements." See Second Division Award 7629.

It is the Board's opinion that a "shift" connotes a group working together alternating with other groups. Therefore, the Board reasons that one position established with distinctive hours over a ten-month period does not constitute a unilateral and arbitrary establishment and operation of a fourth shift.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1987.