

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad Company violated the provisions of the current controlling Agreement when they changed working hours in the arrival and departure yards from 12:01 a.m. backward to 11:00 p.m., causing a partial change in rest days.

2. That because of said changes, Car Inspectors D. C. Lauderdale, R. R. Harrison, F. M. Hearington, S. R. Brittman and F. A. Payne were forced to work seven (7) hours each of their first rest days.

3. That the above named Car Inspectors be compensated seven (7) hours each at the time and one-half rate of pay for Car Inspectors, commencing October 16, 1984 and continuing until satisfactorily settled.

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.

At the Carrier's Memphis, Tennessee Yard facilities, Car Inspectors are on duty 24 hours per day, seven days per week. Prior to October 16, 1984, the starting times and quitting times of the three shifts were:

First Shift	8:00 a.m. - 4:00 p.m.
Second Shift	4:00 p.m. - 12:00 a.m.
Third Shift	12:00 a.m. - 8:00 a.m.

Changes in the Carrier's operations prompting a change in the starting times of the three shifts. The new hours of the Car Inspector assignments were:

First Shift 7:00 a.m. - 3:00 p.m.
Second Shift 3:00 p.m. - 11:00 p.m.
Third Shift 11:00 p.m. - 7:00 a.m.

Claimants herein are all assigned to the third shift. They claim to have been adversely affected by the change in their starting time. That assertion is premised on the belief that when the starting times of the third shift changed, the rest days of the Claimants also changed. The example referred to by the Organization as demonstrative of the effect of the change in working hours is as follows:

"For example, the week of January 6, 1985 through January 12, 1985, Sunday through and including Saturday. If you work from 12 midnight to 8:00 a.m., with Friday and Saturday rest days, your last day to work is at 8:00 a.m. Thursday morning and you then return to service following two rest days at 12 midnight Saturday night for your first day back.

6thS	7thM	8thT	9thW	10thT	11thF	12thS
Work	Work	Work	Work	Work	Rest	Rest

Now change the hours of this shifts to 11:00 p.m., which results as follows.

6thS	7thM	8thT	9thW	10thT	11thF	12thS
Rest	Work	Work	Work	Work	Work	Rest

By changing the starting time backwards, every man on the midnight shift was forced onto different rest days."

Thus the Organization maintains that when Carrier changed the starting time of these third shift employees, they were forced to work seven hours of their first assigned rest day, thus triggering Rule 50 of the controlling Agreement, which reads as follows:

"The exercising of seniority to displace junior employees, which practice is usually termed 'rolling' or 'bumping' will not be permitted, except employees displaced through abolition of jobs, force reduction or by demotion, and other employees so affected thereby, will be allowed to place themselves in such jobs as their seniority entitles them to, but only such employees who are actually disturbed by rearrangement of jobs, abolition of jobs or demotion will be permitted to exercise their seniority in this manner."
(Emphasis added by the Organization.)

The Organization further contends that Carrier's action was violative of Rule 7(a), which states:

"For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis with a minimum of one hour's pay at pro rata rate for any such service performed."

The Carrier asserts that the Claimants' rest days remain unchanged following the change in schedule. According to its calculations, Carrier argues that the third shift Inspectors' time off was not shortened by the change at all. Furthermore, Carrier rejects the Organization's contention that Claimants are entitled to displacement rights under Rule 50 of the Agreement, arguing that the Rule does not apply to the instant situation where starting times were changed. Finally, Carrier stresses that there is nothing in Rule 7(a) to support the Organization's demand for penalty payment, as this case does not involve instances where Claimants were required to work after their regular working hours.

Based on the record evidence before us, it is clear that the pivotal issue in this case is whether the Organization met its required burden of proving that Claimants' rest days were altered when the starting times of their third shift Car Inspector assignments were changed by one hour. In our judgment, the Organization is correct when it argues that the rest days of the Claimants were changed. A simple example of this should suffice. A third shift Inspector with Friday and Saturday rest days would begin his workweek at midnight on Saturday, which was actually compensated for as Sunday. His final day in the workweek would commence Wednesday night at midnight and end Thursday morning at 8:00 a.m. After observing his Friday-Saturday rest days, he would again begin his workweek Saturday night at midnight.

When the Carrier changed the starting time of the assignments by one hour, however, the third shift rest days were altered by the change in time. Thus, a third shift Inspector, instead of beginning his workweek on midnight Saturday, would start at 11:00 p.m. on that date. The first and last day of his workweek would begin Wednesday night and end at 7:00 a.m. Thursday. At the close of that shift, he would then observe Thursday and Friday rest days before returning Saturday at 11:00 p.m. for the start of another workweek.

Since the rest days were altered, the question then becomes whether the Claimants are entitled to displacement rights under Rule 50 of the Agreement. In our view, the Carrier's action in the instant case does not fall within the explicit provisions of that Rule nor can a reasonable inference be made that the provisions of the Rule apply herein. Employees are permitted to exercise their seniority under Rule 50 when there has been an abolition of jobs, a force reduction or a demotion. These conditions are obviously not present here.

Nor do we agree that the latter portion of Rule 50, which refers to "rearrangement of jobs," is applicable. The assignments here were not rearranged. The starting times were simply changed one hour in accordance with Agreement provisions. Though this altered the rest days for Claimants on the third shift, it did not trigger the "bumping" provisions under Rule 50.


In view of our findings, we need not address the issue of whether Claimants are entitled to overtime under Rule 7(a).

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 21st day of October 1987.