

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

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Birmingham Southern Railroad Company

STATEMENT OF CLAIM:

1. That the Birmingham-Southern Railroad Company, hereinafter referred to as the Carrier, violated the Agreement, particularly Article 4 and Article 1(e)(2), when they created a relief job on which the hours were not consistent with the position it was relieving and caused Carman R. D. Gentry to work three (3) hours outside what should be regularly bulletined hours each Saturday and Sunday.

2. And accordingly, the Carrier should be ordered to compensate Carman Gentry, hereinafter referred to as the Claimant, for an additional one-half (1/2) hours' pay at straight time or the difference between straight time and overtime for each hour he works between 8:00 p.m. and 11:00 p.m. each Saturday and Sunday commencing on January 25, 1986 and continuing until the position is reestablished in accordance with the Agreement.

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 operative facts of this case are reasonably clear. At Carrier's Birmingham, Alabama, facility there was a three (3) shift operation from Monday through Friday as follows:

"1st shift - 7 AM to 3 PM
2nd shift - 4 PM to Midnight
3rd shift - 10 PM to 6 AM"

This lapping of shifts was permissible on this property because of the language found in Article 5(a)(1) of the Rules Agreement which reads as follows:

"Exceptions to starting time rules may be made when necessary to meet the needs of the service. In the application of this rule, it is understood that the starting time of an assignment will not deviate more than two hours from the times permissible under the present rules and no assignment will be started between the hours of 12:00 midnight and 7:00 a.m."

On week ends on this property, i.e., on Saturdays and Sundays, Carrier employed a two (2) shift operation, namely:

"1st shift - 7 AM to 3 PM
2nd shift - 4 PM to Midnight"

By bulletin notice dated January 22, 1986, Carrier changed the time of the second shift assignment and advertised it to work from 8PM to 4AM. Claimant bid for and was awarded this new second shift assignment effective January 24, 1986. The penalty Claim which is outlined in the Statement of Claim above followed. As a matter of information, the 8PM to 4AM assignment was subsequently abolished on August 8, 1986.

Both parties to this dispute rely on the same Agreement provisions in support of their respective positions. They are:

"ARTICLE 2

One shift: When one shift is employed, the starting time shall not be earlier than 7 o'clock nor later than 8 o'clock.

ARTICLE 3

Two shifts: Where two (2) shifts are employed, the starting time for the first shift shall be governed by Article 2 and the second shift shall start immediately following the first shift or at 8 p.m. If the second shift is not required at those hours, it may be started at 10 p.m.

ARTICLE 4

Three shifts: Where three (3) shifts are employed, the starting time of the first shift shall be governed by Article 2, and the starting time of each of the other shifts shall be regulated accordingly."

The Organization contends that because there are three (3) shifts operated from Monday through Friday, the two (2) shifts which are operated on Saturday and Sunday must have starting times which correspond to the starting times of the three (3) shift positions and that because that did not occur in this case, Article 4 was violated. The Organization rationalizes that the 8PM to 4AM shift on Saturday and Sunday was really a third shift assignment that should have had a starting time of 11PM. The Organization cites Second Division Awards 4183 and 10952 in support of its position in this case.

Carrier argues that the two shifts which operated on Saturday and Sunday were bulletined in compliance with the times allowed by Article 3 of the Rules Agreement. Carrier further points out that the 8PM to 4AM assignment was a realignment of the previous 4PM to Midnight shift and that this change of starting time was necessitated because of interchange deliveries being effected after midnight and Carrier's desire to reduce the overtime costs being experienced by the 4PM to Midnight shift.

We have examined the on-property record of this case; we have heard and considered the presentations of the parties, and we have studied the precedent cited by the participants. It is our conclusion, based upon the Rules Agreement on this property, that the Carrier's position must prevail.

Articles 3 and 4 of the Rules Agreement are clear and separate. They apply to distinct situations each of which exists in this case. Unlike the situation in Award 4183 where there were two separate starting times assigned to two separate groups of employees at different locations within the same yard on the same shift, or that, unlike the situation in Award 10952 where one Carman was assigned to report 1/2 hour earlier than the other Carman assigned on the same shift at the facility, here we have a clear situation in which two (2) shifts were worked on Saturday and Sunday. Article 3 of the Rules Agreement contains clear language relative to the starting times for such two shifts, namely, the first shift is to start as governed by Article 2 (not earlier than 7 o'clock nor later than 8 o'clock), and the second shift is to start at one of three (3) possible times, namely, 1) immediately following the first shift, or 2) at 8PM, or 3) at 10PM.

The assignment of an 8PM starting time in this instance was in compliance with the Agreement language. The Claim as presented must be, and is, denied.

A W A R D

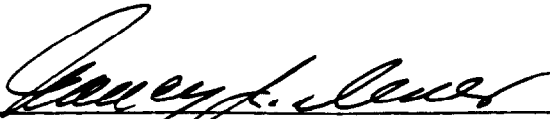
Claim denied.

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Award No. 11558
Docket No. 11400
88-2-87-2-42

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.