Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12151
SECOND DIVISION Docket No. 11890
91-2-89-2-200

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Chicago and North Western Transporation Company

STATEMENT OF CLAIM:

1. The Chicago and North Western Transportation Company violated Rules 4 and 29 of the controlling agreement beginning on November 10, 1988, by establishing a lap shift at Carrier's Belvidere, Illinois Tri Loading and Repair Facility.

2. Division Manager J. H. Koch failed to deny the portion of the claim and grievance in favor of Carman Sheredy, and therefore, the claim for Carman Sheredy must be paid as presented in accordance with Rule 29.

3. Accordingly, Carmen F. Martinez, G. Klem, and W. Sheredy are entitled to be compensated one (1) hours pay at the time and one-half rate beginning on November 10, 1988, for each such day thereafter so long as this continuing violation occurs.

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 basic facts of this case are set forth as follows: Prior to November 10, 1988 Carrier employed eight Carmen at the Auto Loading Facility in Belvidere, Illinois. New cars are loaded at this facility and said Carmen assisted in the loading of automobiles. In addition, the Carmen inspected and, if necessary, made repairs on the auto transportation railcars before the automobiles were loaded. The eight Carmen worked from 7:00 A.M. to 3:30 P.M. Approximately one mile from this site is Carrier's train yard and riptrack

facility. By bulletin notice dated November 3, 1988, Carrier posted nine positions and invited application bids for six Carmen Welders and three Car Inspector positions. One of the latter positions had been historically assigned at the train yard facility. The other two Car Inspector positions were new positions and assigned to this facility. Their assignment hours were 6:30 A.M. to 2:30 P.M. The six Carmen Welder positions continued the 7:00 A.M. to 3:30 P.M. workday schedule.

It was the Organization's position that Carrier's actions specifically with respect to the change in hours for the two Car Inspectors' positions violated Rule 4, since employees on the first shift always worked from 7:00 A.M. to 3:30 P.M. Rule 4 - Starting Time and Two Shifts reads: "Where two shifts are employed, the starting shift of the first shift shall not be earlier than 6:00 A.M. or not later than 8:00 A.M. The second shift shall start not earlier than the close of the first shift nor later than 8:00 P.M." It argues that said rule does not provide for the lapping of shifts, but instead sets the starting time for all Carmen working the first shift. Furthermore, it maintains that contrary to Carrier's position that Rule 6 permits separate starting time for Car Department employees employed at repair facilities and for Car Department employees engaged in inspection (train yards), the new two Car Inspector positions are not separate train yard positions, but rather repair facility positions where the incumbents inspect rail cars at the repair facility. The Organization also asserts that Carrier violated the Agreement's Claim handling time limits, since Carrier failed to deny the Claim filed on behalf of Carman W. Sheredy. Carrier's denial letter of December 27, 1988 did not address this Claimant.

Carrier contends that Rule 6 permits separate starting times for Carmen performing distinct inspection and repair duties. It argues that Rule 6 bases its division on function rather than location and observes there are no rule prohibitions against following this functional demarcation at locations. In fact, it points out that frequently the inspection of a car and the repairs neccessitated by that inspection take place at the same locaton. The second paragraph of Rule 6 is referenced as follows:

> "The starting time for Car Department employees at repair facilities shall apply separately from that for Car Department employees engaged in inspection (train yards). Where two or more Car Department repair facilities exist as a single seniority point the starting time provisions shall apply separately at each such repair facility."

It also notes there are two separate facilities at Belvidere, which includes a train yard/rip track facility and an auto loading facility where new cars are loaded by an automobile manufacturer. Carrier does not own the latter facility.

In considering this dispute the Board concurs with Carrier's position as to the Interpretative Application of Rule 6. In the absence of hard data such as prior Awards dealing with an identical provision or systemwide practice clearly indicating a specific unmistakable application of Rule 6, this Board must interpret Rule 6, specifically the second paragraph thereof in a manner consistent with contract construction principles. On its face and viewing the words "repair facilities" and "train yards", it would appear that the negotiators of this provision were speaking of location with respect to the separate application of starting times. If so, it would have been easier to use the preposition "at" in the latter portion of the first sentence and not contain the words, "train yards" within parentheses. By avoiding this simple expression and using the words "engaged in inspection (train yards)", the parenthesized words indicate "for instance", but do not forclose or limit inspection to train yards. If that were the intent, the parties could have simply used the words "engaged in inspection at train yards." Accordingly, since the words in the first sentence of paragraph 2 do not demarcate functions as to locations, and since the Organization's arguments do not persuade us that location is the pivotal criterion, we are compelled to deny this portion of the Claim. Conversely, we will sustain the Claim vis a vis Carman W. Sheredy but only up to April 4, 1989. This is consistent with National Disputes Committee Decision No. 16, Third Division No. 28182 and Award No. 5 of Public Law Board No. 1844. Carrier's April 4, 1989 denial, although late, was effective to toll Carrier's liability for the procedural violation as of that date. Its failure to include his name in its December 27, 1988 denial letter was technically a procedural violation. Liability shall extend from December 7, 1988 through April 4, 1989 and only for days when Mr. Sheredy relieved either Mr. F. Martinez or Mr. G. Kelm.

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 2nd day of October 1991.