

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

- (a) The Carrier violated the rules of the Working Agreement when on April 28, 1954 it changed the starting time of the Third Shift position in the Valley Junction Yard Office from 11:00 P.M. to 12 midnight, and
- (b) That Yard Clerk E. C. Renfro, regular occupant of the position, and Yard Clerk R. D. Fritz, regular assigned Relief Man, and/or their successors be allowed one hour's pay per day at punitive rate for each day that the violation has existed and until it is corrected.

EMPLOYES' STATEMENT OF FACTS: Prior to April 28, 1954, the following permanent positions were in existence in Seniority District No. 37 (Illinois Transfer)

1. Chief Yard Clerk—7:00 A.M. to 3:00 P.M.
2. Yard Clerk—7:00 A.M. to 3:00 P.M.
3. Yard Clerk—7:00 A.M. to 5:00 P.M.
4. Yard Clerk—3:00 P.M. to 11:00 P.M.
5. Helper—5:00 P.M. to 1:00 A.M.
6. Yard Clerk—11:00 P.M. to 7:00 A.M.
7. First Relief
8. Second Relief

All of the above positions with the exception of No. 3 are assigned to Valley Junction Yard Office. Position No. 3 is assigned to Southern Crossing Office. These two offices comprise Seniority District No. 37.

On April 23, 1954, Positions No. 2 and No. 6 were abolished under Bulletin No. 31, the same to be effective on April 28, 1954. Employees' Ex-

OPINION OF BOARD: The decision in this case turns on the point of whether or not the Organization is correct in its claim that the second paragraph of Rule 38, "Established Starting Time",

"Where three consecutive shifts are worked covering a twenty-four (24) hour period, the starting time of the first of such shifts shall be established between 7:00 A.M. and 8:00 A.M. and the second and third of such shifts shall follow the first and second shifts, respectively. This is not intended to prohibit single or double-shift assignments, in addition to the continuous assignments, with the starting time to fit the requirements of the service.",

is an exception to Rule 16, "Changing Assigned Starting Time or Rest Days",

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least twenty-four (24) hours' notice to the employees affected. When the established starting time of a regular position is changed one (1) hour or more for more than five (5) consecutive days, or changed in the aggregate in excess of two (2) hours during a period of one year, or the assigned days of rest are changed, it will be a new position and will be rebulletined in accordance with Rule 11. The incumbent of the position will remain thereon during the bulletin period, and if he is not the successful bidder, must exercise his seniority rights within ten (10) calendar days from the date of the bulletin. Junior employees affected must exercise their seniority in the same manner as provided in Rule 17",

in that the starting time of a third shift position, such as is involved here, one of three consecutive shifts, can only be determined under Rule 38.

The Organization claims that the Carrier, having changed the third shift to a 12:00 midnight starting time, should have, in the same action, moved up the starting times of the first and second shifts to 8:00 A.M., and 4:00 P.M., to maintain the continuity of shifts—something the Organization asserts the Carrier is required to maintain.

The Carrier states that due to a "falling off of traffic it was necessary to reduce forces at that location. Effective April 23, 1954, the yard clerk position working from 7:00 A.M. to 3:00 P.M. was abolished and in order to meet the requirements of the service, the hours of the position working from 11:00 P.M. to 7:00 A.M. were changed to 12:00 midnight to 8:00 A.M."

Rule 38, "Established Starting Time", is a rule governing starting time generally—those of consecutive shifts as well as single or double shifts.

Rule 16, "Changing Assigned Starting Time or Rest Days", is a rule setting forth the specific manner in which—as its title indicates—assigned starting times may be changed.

In its application we must here hold that Rule 16 modifies Rule 38.

The Carrier maintains that its action under Rule 16, changing the starting time of Claimant's position, broke the continuity of shifts and it was not required to change the starting times of the first and second shifts—there no longer were three consecutive shifts.

The Organization concedes, in its original submission, "the continuity of consecutive shifts was broken." The Carrier was exercising its rights under Rule 16.

This Division clearly stated in Award 4952 (Carter):

" * * * Special rules prevail over general rules and leave the latter to operate outside the former. * * *"

If the parties never intended the Carrier to have the authority to change the starting time of regular assignments, they certainly wouldn't have gone to the trouble of spelling out in detail how it could properly be done, as they did in writing Rule 16.

The Organization charges the Carrier with violating Rule 59, reading:

" * * * established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of * * * evading the application of these rules." (Emphasis ours).

The Organization, in its reply to the Carrier's original submission, claims the Carrier contended it was necessary to have two employes on duty between 7:00 and 8:00 A.M., and "instead of working third shift man (Claimant) one hour overtime * * * they saw fit to attempt to void the application of Rule 38 by changing the starting time of the third shift position, and, in fact, requiring the occupant to suspend work on his regular assignment between 11:00 P.M. and 12:00 midnight to avoid the payment of overtime between 7:00 and 8:00 A.M., * * * in violation of Rule 41," which reads:

"Employes will not be required to suspend work during regular hours to absorb overtime."

The Organization then sets forth overtime worked by the second shift man between the hours of 11:00 P.M. and 12:00 midnight for a twelve months' period, following shift abolition complained of.

Accepting the Organization's figures, the Carrier points out the year's total was "18.2% or less than 11 minutes per night * * * not a substantial amount of work performed in the interval between shifts."

Award 193 (Spencer) of this Division held:

"The single situation in which the rule protects the employe is that described in the rule, 'Where three consecutive shifts are worked covering the twenty-four (24) hour period * * *.'"

"In determining when the situation contemplated by the rule exists, the Referee is of the opinion that the test to be applied is whether there is a substantial amount of work covered by the Clerks' Agreement being performed in the interval between shifts. Neither the fact that the office is open nor the fact that some employe on duty is incidentally performing some clerical duties during the interval creates the situation contemplated by Rule 36." (Rule 36 here.)

We must hold that a total of 66 hours and 30 minutes work performed out of 365 hours in the interval over a period of one year was not a "substantial amount" implied by the above quotation from Award 193.

The same Award has this to say of the Rule 36 (38 here):

"The rule in question was not intended to interfere with the carrier's right to assign men to hours of duty which would best meet the needs of the service. It was intended to protect employes against being called to work at unreasonably early hours in a single situation. In other situations, the rule leaves the management free to assign hours of duty most consistent with the requirements of the service."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all evidence, finds and holds:

The the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

In summary, after a careful review of the evidence and a reading of the many Awards cited by the parties, we must conclude:

1. Carrier was acting within its rights under Rule 16 in changing the starting time of the third shift position at Valley Junction Yard Office from 11:00 P. M. to 12:00 midnight.
2. That the Organization has failed to prove Carrier violated Rules 38, 41 and 59.
3. The Agreement has not been violated.

AWARD

Claim (a and b) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1957.