

Award No. 13834
Docket No. MW-13768

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

INDIANA HARBOR BELT RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on July 17, 18, 19, 20, 21, 24, 25, 26 and 27, 1961, it required B&B Foreman Richard Lemke, B&B Carpenters P. H. Barnes, R. E. Ahrendt, V. N. Eanske, W. Watkins, J. A. Gerk and L. Jacob and B&B Sheet Metal Worker A. E. Lorenz to suspend work between 6:00 A. M. and 10:00 A. M. of their regular assignment.

(2) The Carrier further violated the Agreement when, on the same aforementioned dates, it assigned each of the above named claimants to work during overtime hours from 2:30 P. M. to 6:30 P. M. and compensated them therefor at straight time rates.

(3) Because of and for each day of the violation covered by Part (1) of this claim, the Carrier shall pay each of the above named claimants four (4) hours' pay at the straight time rate of his respective position.

(4) Because of and for each day of the violation covered by Part (2) of this claim, the Carrier shall pay each of the above named claimants four (4) hours' pay at the half time rate of his position.

EMPLOYES' STATEMENT OF FACTS: The claimants were assigned to Bridge Crew No. 1, working regularly assigned hours from 6:00 A. M. to 2:30 P. M., with a thirty minute lunch period. On July 13, 1961, they were notified that their starting time would be changed from 6:00 A. M. to 10:00 A. M., effective July 17, 1961.

On July 17, 1961, Bridge Crew No. 1 began the work of repairing the Blue Island Hump Bridge, completing said work on July 27, 1961. At the completion of this work, the Carrier again changed the starting time of this crew from 10:00 A. M. back to its regular starting time of 6:00 A. M.

change the time of this bridge and building gang from 6:00 A. M. to 10:00 A. M. your Honorable Board in many decisions, too numerous to mention, in the past has ruled that the right of management to manage should not be upset.

None of the claimants in this dispute were required to work in excess of eight hours on July 17, 18, 19, 20, 21, 24, 25, 26 and 27, 1961 and therefore any claim for overtime hours is improper.

The claim of the Organization is without merit and should be denied.

OPINION OF BOARD: On the dates in question, Carrier changed the regular hours of Claimants which were 6:00 A. M. to 2:30 P. M. temporarily to 10:00 A. M. to 6:30 P. M. The Organization charges this to be a violation of Rules 5(a) and (b), which read as follows:

"RULE 5. STARTING TIME

(a) The starting time of the work period for regularly assigned service will be designated by the supervisory officer and will not be changed without first giving employees affected 36 hours' notice.

(b) Employees engaged in regularly assigned service will not have their starting time changed for short periods unless necessary to do so to meet service conditions."

There is no dispute that the employees were given more than 36 hours' notice. The main issue involved is whether the change was "necessary . . . to meet service conditions."

Carrier states as its position, "It is a managerial function to determine when service conditions exist which would make it necessary to change the starting time for a short period." The record contains a statement that the major humping operations in this yard occurred prior to 10:00 A. M. and that the main hump lead to the yard was out of service, but no evidence upon which to make any critical estimate of the necessity for the change in hours.

Carrier said that there would be "less disruption of service" during the new hours and that the B&B gang could not have performed this work "as expeditiously, efficiently and safely" if done during the regular hours. But, the evidence upon which this Board could make an independent judgment is not present.

Carrier, in effect, invites this Board to take its word that the change was necessary. As Carrier puts it, "If Carrier, in its judgment, determined for the good of the service and operating conditions that it was essential to change the time . . . the right of management to manage should not be upset."

We do not think that the Board should support every decision of management merely because it was an exercise of managerial judgment. When managerial judgment is challenged, it is the obligation of management to supply the evidence by which this Board can decide if that judgment was proper. Carrier simply has not met that burden in this case.

Moreover, Carrier's position raises serious questions with regard to what the phrase "necessary to meet service conditions" means. It implies that

expediency, efficiency and safety make a change in hours necessary. We think the parties meant that there had to be an element of compulsion involved, not convenience or economy. If safety were involved, most certainly an element of compulsion and necessity would be introduced, but safety is a matter of degree and we ought to have evidence upon which to judge whether the change really was motivated by safety and how much more safe the change was than before. The answers to these questions Carrier asks that we accept upon faith. This we must not do.

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 the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13834, DOCKET MW-13768

(Referee Wolf)

During the time required to repair the Blue Island hump bridge, the main lead to the hump yard was out of service. Since the early morning hours were the rush period, Carrier changed assigned hours of the B&B Gang in order to get more work performed in a safer manner. Efficiency and safety are prime reasons for initiating many changes and were adequate reasons for necessitating this change in compliance with Rule 5 (b).

Award 13834 is in error, and we dissent.

W. M. Roberts
R. A. DeRossett
W. F. Euker
C. H. Manoogian
G. L. Naylor

Oct. 11, 1965