

Award No. 705  
Docket No. SG-703

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Wm. H. Spencer, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN  
OF AMERICA**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** "(a) That W. O. Dalen be paid at the time and one-half rate for service performed between the hours of 5:00 p. m. and 9:00 p. m., June 2 to July 14, 1936, both dates inclusive. Also that he be paid at the straight time rate between 8:00 a. m., and 12:00 noon for the above period.

"(b) That S. W. Sargent be paid at the time and one-half rate for service performed between the hours of 5:00 p. m. and 9:00 p. m., June 10 to July 14, 1936, both dates inclusive. Also that he be paid at the straight time rate between 8:00 a. m. and 12:00 noon for the above period.

"(c) That E. T. Engle be paid at the time and one-half rate for service performed between the hours of 5:00 p. m. and 9:00 p. m., June 1 to 12, 1936, both dates inclusive. Also, that he be paid at the straight time rate between 8:00 a. m. and 12:00 noon for the above period."

**EMPLOYES' STATEMENT OF FACTS:** "On May 31, 1936, Signal Foreman Rhodes and his crew were taking care of the signal apparatus account of steel gang replacing rail over the Cascade Hill (Portland Division). This signal gang and the steel gang were working the regularly established eight hour day between the hours of 8:00 a. m. to 12:00 noon and 1:00 p. m. to 5:00 p. m.

"On or about June 1, 1936, the Carrier, in conformity with the provisions of the Maintenance of Way agreement, changed the starting time of the steel gang. Brotherhood of Maintenance of Way agreement governing, and for ready reference, the rule involved is as follows:

'Rule 33—The starting time of the work period for regularly assigned service will be designated by the supervisory officer to meet the requirements of the service, and will not be changed without first giving employees affected thirty-six (36) hours' notice.'

"The steel gang's hours were thus changed to 12:00 noon to 9:00 p. m. with an hour off for lunch.

"The Carrier requested that the signal gang change their working hours to conform with those arbitrarily assigned to the steel gang—namely, 12:00 noon to 4:00 p. m. and 5:00 p. m. to 9:00 p. m. A pool of the signal gang was taken by the employees' committee and it was decided such a change was not agreeable to the employees involved. The Carrier was so notified. This

representatives of the Signalmen's Organization, we have included with this brief as Exhibit 'M', Division Engineer Hampton's letter, dated Portland, April 25, 1936, addressed to M of W Employees—Signal Employees and Water Service Employees. The letter in question did not in any way modify Rule 7 nor deprive the Carrier of any of its rights under Rule 7; it should be observed that the letter is addressed to employees other than Signal Employees. It does not indicate that the hours assigned had been agreed to by Signalmen under Rule 7; it constituted instructions not in any way related to nor based on agreement provisions, and even if it had been based on the provisions of Rule 7, that rule provides for changes in the starting time, **based on actual service requirements**, hence, any argument predicated on this document to support the instant claim will not serve a useful purpose."

There is in existence an agreement between the parties bearing effective date of March 1, 1926.

**OPINION OF BOARD:** The evidence of record establishes the fact that prior to the time when this dispute originated the parties had reached an agreement that the hours of work of signal employees should be from 8:00 A.M. to 12:00 Noon and 1:00 P.M. to 5:00 P.M. It follows that the Carrier in assigning the present claimants to work from 12:00 Noon to 4:00 P.M., and 5:00 P.M. to 9:00 P.M. either changed the starting time of the shift already assigned or established a new shift with a starting time different from that of the starting time agreed upon. The record also indicates that the carrier took the action in question without the consent of the petitioner or its local committee. The question for the Division to answer is, therefore, whether the Carrier, in taking the disputed action, violated the provisions of Rule 7 which provides:

"There may be one, two or three shifts employed. The starting time of any shift shall be arranged by mutual understanding between the local officers and the employees' committee, based on actual service requirements."

The petitioner contends that this rule means that the starting time of "any shift" having once been established by "mutual understanding" between the local officials of the carrier and the employees' committee can be changed only in the same manner, that is, by a "mutual understanding" between the same parties. The petitioner contends further that "mutual understanding" as employed in this rule means an "agreement" in the usual sense of the word.

The Carrier, in defense of its position, contended that to approve the interpretation requested by the petitioner would give it "plenary and sovereign authority to dictate what the assigned hours shall be." The Carrier argued that the term "mutual understanding" as used in Rule 7 means that the carrier is merely required to notify the employees' committee that, in view of the requirements of the service, it proposes to change, or has changed, the starting time of a given shift. In brief, the Carrier insists that Rule 7 does not require it to reach any agreement with the petitioner with respect to a change in the starting time of a shift.

The contention of the Carrier that the rule merely requires it, in terms of service requirements, to notify the employees' committee that it proposes to change the starting time of a shift of signal employees is not tenable. This would, indeed, be a strange construction to place upon the language of Rule 7. While the term "understanding" in some connections may have the meaning insisted upon by the Carrier, it is clear that in contracts, both commercial and collective, the term is commonly used synonymously with the term "agreement". The Carrier, in support of its contention, relied strongly on the clause, "based on actual service requirements". Moreover, it offered substantial evidence tending to show that the method of operation employed

on the work in question was both economical and desirable. The Division, however, is of the opinion that the inclusion of this clause was intended to indicate the basis on which an understanding might be reached between the parties, and was not intended to give the Carrier the power to make a change in the starting time of a shift without the consent of the petitioner.

The Carrier's contention that to concede the correctness of the Petitioner's position would give it absolute power to dictate the starting time of all shifts may be well taken with respect to the subject matter under controversy. This, however, is a consideration which the Carrier should have weighed when it entered into the agreement. Moreover, the result of the construction here adopted is not more unusual than that of the operation of many rules in collective agreements. The Carrier may be convinced that a rate of pay which has been agreed upon for a given class of employees is not justified by current business conditions. This fact, however, would not justify the Carrier in changing such rates without the consent of the Organization representing such employees.

**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 in the action that it took violated Rule 7 of the agreement between the parties, and that the claimants are entitled to be compensated in accordance with their respective claims.

#### AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1938.

#### DISSENT

This award, by its intimation in the last paragraph of the opinion that the carrier should have avoided giving to the employees absolute power to dictate the starting time of all shifts by refraining from entering into the existing agreement, which includes Rule 7 providing that such starting time "shall be arranged by mutual understanding - - - based on actual service requirements", is in error.

Such intimation that arbitrary power was conferred upon one of the two parties to the agreement is wholly in conflict with and vitiated by the plain wording of Rule 7 which requires that starting time shall be arranged by mutual understanding based on actual service requirements.

/s/ C. C. COOK  
/s/ R. H. ALLISON  
/s/ GEO. H. DUGAN  
/s/ J. G. TORIAN  
/s/ A. H. JONES