

Award No. 6005

Docket No. CLX-5866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that (a) The Agreement Governing Hours of Service and Working Conditions between Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949 was violated at the Louisville, Kentucky Agency by changing the hours of assignment to the extent of thirty (30) minutes daily of vehicle employees from those specified at time the positions were advertised; and

(b) Arthur James, et al., whose names are set out in Employees' Exhibit 3, and all others who have been adversely affected, shall be compensated for thirty (30) minutes daily at the overtime rate retroactive to and including October 28, 1950.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 28, 1950 Vehiclemen at Louisville, Kentucky were not required to take a meal period. The vehicle positions occupied by the Vehiclemen were bulletined in accordance with Rule 10, and did not provide for a meal period.

October 26, 1950 the Terminal Agent at Louisville, Kentucky posted a notice establishing a meal period affecting forty (40) vehicle positions, which became effective Saturday, October 28, 1950, as identified by attached document marked "Employees' Exhibit A". The assignments for these positions therefore were altered to the extent of thirty (30) minutes. The starting time of twenty-two (22) of them as identified by the attached document marked "Employees' Exhibit B", were advanced thirty (30) minutes, with the quitting time remaining the same and a meal period of thirty (30) minutes was designated. The quitting time of eighteen (18) of them as identified by the attached document marked "Employees' Exhibit C", was advanced or extended thirty (30) minutes and a meal period of thirty (30) minutes was designated.

This action of Management was protested and claim filed with Terminal Agent W. E. Burnett October 30, 1950, contending it was in violation of the Agreement (Employees' Exhibit D).

November 3, 1950 Terminal Agent Burnett denied the claim on the basis the Agreement was not violated (Employees' Exhibit E).

over a junior employee. In that event, of course, the position is rebulletined as a vacancy, not because of the change in the working period but by reason of incumbent vacating the position under the right given him by Rule 18. It is of great significance that an option is granted by Rule 18 to the employee affected for it recognizes that changes in the working period do not affect the work of the position which is the core of the bulletin. The change having no bearing upon the position may conceivably affect the incumbent. Hence, the option in his favor where the change exceeds one hour.

It follows, therefore, that changes in the working period of a position may properly be accomplished by notice under Rule 52 and that the employees affected derive their rights under Rule 18. Such changes are not related to the work of the position and, accordingly, do not require re-bulletining under Rule 10.

In this case, Employees claim that the individuals who were assigned a meal period of thirty minutes under Rule 48, on October 28, 1950, shall be compensated for thirty minutes daily at the overtime rate. It is not alleged that any employee worked in excess of eight hours in any one day, the day's work provided in Rule 45, or that the employees worked any part of their meal period after October 28, 1950. The claim, therefore, is not one for time worked but for compensation for work not performed. Regardless of whether there was a violation of Rules 10 and 52 as alleged, and there was not, there is no merit to this claim for punitive rate, which punitive basis of compensation under the Agreement between the parties is confined to work performed under the overtime, holiday and call rules.

Carrier submits that there has been no violation of Rules 10 and 52 as alleged; that the action of the Carrier in assigning a meal period of thirty minutes on the positions in question was in accordance with the rules and common practice in the industry; that there is no merit to the claim and that it should be denied in its entirety.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced).

OPINION OF BOARD: The Parties agree on the facts in this case. Before October 28, 1950, the vehicleman positions at Louisville, Kentucky, were continuous-hour ones, without formal meal periods. On October 26, 1950, the Carrier's terminal agent posted a notice stating that effective October 28, 1950, forty of these positions would have meal periods of 30 minutes each. At the same time the starting time of 22 of the 40 positions was compensatorily advanced 30 minutes, with no change in quitting time; and the quitting time of the other 18 positions was extended 30 minutes, with no change in starting time.

In main support of the employees' claims, the Organization contends that Rule 10 on Bulletining and Rule 52 on Changing Starting Time were violated by the Carrier. In respect to Rule 10, the Organization argues that (1) starting time, quitting time, and meal period are among the characteristics and items required to be specified in bulletins on new positions and vacancies; (2) the purpose of such position specifications has always been to make possible the proper exercise of seniority rights by employees for positions considered attractive; and (3) unilateral change of any of these specifications by the Carrier tends to defeat the above-stated, agreed-on purpose. That is, even though the work duties of a position might remain unaltered, a change in these other items amounts to a material change in the job because its desirability to the incumbent may well be considerably altered.

In respect to Rule 52, the Organization contends that, although the above-mentioned notice was posted more than 36 hours before the announced

changes were to become effective, said notice was inadequate. Separate written notice to each individual employe was contemplated by the Rule.

The Carrier contends, in respect to the alleged violation of Rule 10, that (1) neither new jobs nor vacancies were involved in the creation of formal meal periods; (2) the duties of the positions remained unaltered; and (3) it was never contemplated by the Parties that, under Rule 10, existing positions would have to be re-bulletined when a few minor items like meal period, starting time, and quitting time were changed thereon.

In respect to Rule 52, the Carrier argues that nothing therein can be interpreted as requiring separate written notices of starting-time changes to individual employes. A typewritten or mimeographed notice is a written one; and if same is posted in a place accessible to affected employes at the proper time, the Rule's requirements have been fully met. The Carrier further argues that, although Rule 52 refers explicitly only to changes in the starting time of positions, changes in quitting time and in meal periods are covered by implication, since a change in starting time automatically involves a change in quitting time and a change in meal period perforce alters either starting or quitting time.

The crucial issue in this case is whether the meaning and intent of Rule 10, read in conjunction with other rules (chiefly Rule 52) is such as to support the employes' claim and contentions. We think that the answer must be in the affirmative, for the following reasons: First, we think there is much merit in the argument that changes in the items listed in Rule 10 may alter the over-all nature and attractiveness of a position to such an extent that to the employes, for whose protection the Rule was designed, the position is a new or different one. If the Parties had not thought that meal periods, starting time, and quitting time had such importance to employes, they would not have specified these items among those mentioned in the Rule. Second, Rule 52 is to be regarded as containing an exception to the restrictions on managerial prerogatives contained in Rule 10. It says that management is free to change starting times upon giving the specified notice. We hold to the view that, when one or more exceptions are explicitly mentioned, all other exceptions are thereby excluded from effect. Third, we do not agree that Rule 52 covers by implication changes in quitting time and in meal periods. We think that if the Parties had intended to include these latter two items as exceptions, they would have explicitly so stated.

In the light of the circumstances of this case we think that the Carrier should have either re-bulletined the positions or tried to effect the desired change through negotiation with the Organization. An affirmative award on Claim (a) is required.

In respect to the claim that the aggrieved employes should be compensated for 30 minutes for each day of violation at overtime rates, we rule that the penalty shall be confined to pro rata rates of pay. In so doing we follow the majority of relevant awards on this sort of question.

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 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

That the Carrier violated the agreement and must compensate the employes for the time involved at pro rata rates of pay.

AWARD

Claim sustained to the extent set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1952.