

Award No. 13802

Docket No. MW-13691

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) The Carrier was in violation of the Agreement on May 22, 23, 24, 25, 26, 29 and 31, 1961 when it required Maintenance Gang Foreman Richard Walters, Assistant Foreman N. Kieselhorst, Laborers Robert Walters, W. Fritz and M. Hassee to

(a) Suspend work on their regular assignments from 7:00 A. M. until 2:30 P. M. without pay and to

(b) Perform service during overtime hours from 4:00 P. M. to 10:30 P. M. at their respective straight time rates of pay.

(2) (a) Each of the aforementioned employees be allowed forty-five and one-half hours' pay at their respective straight time rates because of the suspension of work for six and one-half hours on each of the seven aforementioned days.

(b) Each of the aforementioned employees be allowed the difference between what they were paid at straight-time rates and what they should have been paid at overtime rates for the six and one-half hours of work each of them performed at straight-time rates during overtime hours on each of the seven aforementioned days.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 22, 1961, the claimants were assigned to their respective positions with Maintenance Gang No. 1, which was regularly assigned to single shift day service with assigned hours of 7:00 A. M. to 4:00 P. M., including a one hour meal period.

Beginning on May 22, 1961 and continuing through May 31, 1961, the assigned hours of this gang were changed to 2:30 P. M. to 10:30 P. M. in order to utilize it as the second shift of a double shift operation on a track surfacing project. This arbitrary action by the Carrier resulted in the institution of the instant claim.

tions are received from employees in the higher class and employees working in a lower class who have established seniority in a higher class decline to accept a position in the higher class, the position will be assigned by bulletin to the senior eligible employee."

With respect to the other claimants involved in this case, Position Bulletin No. 26 clearly put them on notice that Maintenance Gang No. 1 would be worked on the second shift effective with the beginning of the double shift operation. Since claimant Foreman Walters failed to bid on the extra gang foreman's position on the first shift, there is no basis for any complaint on his part, nor for his claim for a penalty on account of having his assigned hours changed to the second shift on the dates involved. Likewise, since the other employees in Maintenance Gang No. 1 who have claims in the present case likewise failed to take any steps to request assignment with Foreman Walters to the first shift, instead of having an extra gang work on the first shift, their claims are likewise without support.

In the present case, although the claimants had three weeks' notice that they were going to be used on the second shift during the double shift operation, they failed to take any steps to indicate their desire to work on the first shift until the assigned hours were actually changed. Thereafter, the division engineer did comply with their request, and their assigned hours were assigned back to the first shift effective May 31, 1961. The change in assigned hours effective May 22, 1961 was handled strictly in accordance with applicable rules.

The claims are without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were regularly assigned to Maintenance Gang No. 1 during the times here in question. Until May 22, 1961, their regular hours were from 7:00 A.M. to 4:00 P.M. Due to business requirements, a second shift was added on May 22, 1961, a new gang being assigned the first shift from 6:00 A.M. to 2:30 P.M. and Gang No. 1 the shift from 2:30 P.M. to 10:30 P.M.

The Claimants charge that Carrier violated the Agreement by thus changing their hours. They contend that by requiring them to work the second shift, Carrier deprived them of their right to work their regularly assigned hours and compelled them to work during what should have been their overtime period.

The first question is whether Carrier had the right to change Gang No. 1's hours. In our view, that issue must be resolved in the affirmative. There is no question but that Carrier has discretion, except as limited by agreement, to assign work in accordance with the requirements of its business. See, e.g., Award 5331. Carrier has complied with Rule 34, and neither Rule 19(a), 35(a), 51, nor any other provision of the Agreement to which we have been referred restrains Carrier from changing the hours in the present situation.

Rule 35 (a) is not applicable since it applies solely to single shifts; the instant case concerns double shifts.

Rule 51, which prescribes that "Employees will not be required to suspend work during any regular assigned work period for the purpose of

absorbing overtime" has not been breached. Claimants worked the regular hours of their assignment, the hours having been changed in accordance with the Agreement, and there is no evidence that they were required to suspend work to absorb overtime. See Awards 8428 and 13218.

Rule 19 (a) does not affect the case. In line with its requirements that all "new or vacant positions" will be bulletined, the new gang's positions were bulletined beginning May 1, 1961. None of the Claimants bid on those positions. It was unnecessary to bulletin Gang No. 1 positions, since they were not "new or vacant."

Petitioner has not shown a violation of any applicable Rule. The mere fact that on June 1, 1961, Carrier rearranged the hours to meet Claimants' protest and gave Gang No. 1 the first shift does not constitute an acknowledgment of guilt or evidence that the Agreement had been breached.

The claim will be denied. See Awards 3039, 9567 and 13139.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1965.