

Award No. 14423
Docket No. MW-15218

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, beginning with August 1, 1963, it required Foreman G. H. Roberts, Machine Operators V. Valdez, James Matzek, W. D. Eckleberry, Jose Valdez, Laborers Jose Valdez, N. S. Zertuche, Antonio G. Zertuche, Geronimo Martinez, Santiago Alviso, Francisco Valdez, Juan Valdez, L. E. Sprinkle, L. K. Roberts and A. E. Hernandez to:

- (a) suspend work during their regularly assigned working hours from 8:00 A. M. to 3:00 P. M., without pay

and to

- (b) perform work during recognized overtime hours from 12 Midnight to 6:00 A. M. at their respective straight-time rates. (Carrier's File M-975-63.)

- (2) Each claimant* named in Part (1) of this claim be allowed:

- (a) six (6) hours' pay at his straight-time rate for each day of the violation referred to in Part 1(a) of this claim;
- (b) the difference between what he was paid at his straight-time rate and what he should have been paid at his overtime rate for each day of the violation referred to in Part 1(b) of this claim.

*NOTE: Claim for the following named claimants is limited as follows:

Machine Operator — W. D. Eckleberry — August 1 to September 20, 1963, both dates inclusive.

Machine Operator — Jose Valdez — to commence on September 20, 1963.

Laborer — Jose Valdez — August 1 to September 20, 1963.

Laborer — Antonio Zertuche — August 1 to September 12, 1963, both dates inclusive.

Laborer — Geronimo Martinez — to commence on September 15, 1963.

Laborer — L. K. Roberts — August 1 to August 30, 1963, both dates inclusive.

Laborer — A. U. Hernandez — to commence on September 18, 1963.

EMPLOYEES' STATEMENT OF FACTS: Claimant Section Foreman G. H. Roberts was the regularly assigned foreman of the gang headquartered at Hinckley, Illinois. All of the other claimants were regularly assigned to work in Traveling Section Gang No. 208. The hours of assignment of the positions held by the claimants were designated by bulletin as 6:00 A. M. to 3:00 P. M. and the claimants worked these hours until August 1, 1963.

The Carrier instructed Foreman Roberts that, effective August 1, 1963, he would work from 12:00 Midnight to 8:00 A. M. The claimant was not permitted to work the hours of his regular assignment from 8:00 A. M. to 3:00 P. M. and his duties were performed by another member of his gang. A position of foreman in Traveling Section Gang No. 208 to work from 12:00 Midnight to 8:00 A. M. was not bulletined during the entire period covered by this claim.

All of the other claimants (subject to the exceptions set forth in the "Note" to our "Statement of Claim") were given advance notice that effective August 1, 1963, their "starting time" was to be 12:00 Midnight.

The claimants worked from 12:00 Midnight to 8:00 A. M. each work day and were deprived of the opportunity of working six hours of their regular assignment from 8:00 A. M. to 3:00 P. M. The claimants were required to work six hours during overtime hours each day at their straight time rate of pay.

None of the positions held by the claimants was abolished or rebulletined.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On the dates specified in the claim the claimants were members of traveling section gang No. 208, Aurora Division. This mechanized gang was assigned, along with the Hinckley section gang, to surface 22 miles of track on the Hinckley, Illinois section, located on Carrier's main Chicago-St. Paul line. In line with the usual practice when surfacing, the two gangs were double-shifted from August 1, 1963 to and including September 30, 1963. One gang worked from midnight to 8:00 A. M. and the other from 6:00 A. M. to 3:00 P. M. The change in starting time of

the traveling section gang was made in conformity with the provisions of Rule 34(a) by giving members thereof the required 36 hours' notice, in the same manner as is always done when gangs are double shifted to perform surfacing work.

The claim was appealed by the General Chairman to Carrier's highest officer designated to handle claims in a letter dated October 24, 1963, copy of which attachment is attached hereto identified as Carrier's Exhibit No. 1. The General Chairman wrote a supplementary letter on October 31, 1963 to which he attached a statement made by some of the claimants protesting their assigned hours. Copy of that letter and statement is attached hereto identified as Carrier's Exhibit No. 2. The claim was finally declined in Carrier's letter of December 18, 1963, and copy of that letter is attached hereto identified as Carrier's Exhibit No. 3.

The schedule of rules agreement between the parties effective September 1, 1949 and supplements and amendments thereto is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: In August 1963, Traveling Section Gang No. 208, Aurora Division, and the Hinckley Section Gang were assigned to surface twenty-two miles of track on the Hinckley, Illinois section. The two gangs were double-shifted, one working from 12 Midnight to 8:00 A. M., the other from 6:00 A. M. to 3:00 P. M. This work extended from August 1 through September 30, 1963.

Claimant G. H. Roberts was the Foreman of Gang No. 208, a bulletined position with Hours of Assignment specified as 6:00 A. M. to 3:00 P. M. The other Claimants were Machine Operators and Laborers attached to Gang No. 208. Prior to August 1, all these Claimants worked on a 6:00 A. M. to 3:00 P. M. shift. Thereafter, they were assigned to the Midnight to 8:00 A. M. shift.

Petitioner alleges that Management's reassignment of Claimants deprived them of the opportunity of working six hours on their regular shift and forced them to work six overtime hours for which they received only straight-time pay. Insofar as is here relevant (i.e., the argument was made on the property), Petitioner contends that Rule 34 was violated since (1) Rule 34(b) excludes B&B or track maintenance and fuel service and pumper employees working a single shift when the shift cannot be regulated between the hours of 6:00 A. M. and 5:00 P. M.; (2) a two shift operation, under Rule 34(c), must provide for consecutive shifts; and (3) a shift starting at Midnight is not in conformity with Rule 34(c) requirements.

Rule 34 states in relevant part:

"RULE 34.

(a) When one shift day service is employed, the starting time will not be earlier than 6:00 A. M., and not later than 8:30 A. M., except as hereinafter provided, and will not be changed without first giving employees affected thirty-six (36) hours' notice.

(b) When movement of trains or boats is such that necessary work (other than that performed by gangs engaged in B&B or Track maintenance, and fuel service and pumpers), can be done within the spread of a single shift but cannot be done between 6:00 A. M. and 5:00 P. M., the hours of such service may be assigned to meet the conditions, but no such shift shall have a starting time between midnight and 4:00 A. M.

(c) When two or more shifts are employed, the starting time may be regulated in accordance with requirements of the work, except that no shift shall start between 12 o'clock midnight and 4:00 A. M."

It seems clear that Rule 34(a) is not in point since we are not concerned with "one shift day service." Neither is 34(b) relevant since it involves "the spread of a single shift." Rule 34(c), however, does apply.

Two shifts were needed in August-September 1963. Under 34(c) Management had the right to regulate the starting time of these shifts "in accordance with the requirements of the work" and it did so. See Awards 13802 and 13139. The only proviso, under this Rule, is that neither shift shall start "between 12 o'clock Midnight and 4:00 A. M." A shift which starts at Midnight is not barred under this provision. See Award 6873. Moreover, there is nothing whatsoever in Rule 34 to support Petitioner's assertion that two shifts must be consecutive. A final assertion that Foreman Roberts was not properly re-assigned to the Midnight shift is not supported by the evidence. The claims, consequently, must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1966.

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