# Award No. 15372
# Docket No. MW-16029

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Herbert J. Mesigh, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the provisions of the effective Agreement when, effective July 7, 1964, it arbitrarily changed the assigned hours of Extra Gangs Nos. 301 and 302. (Case No. 30.64 MW.)

(2) Extra Gang Foreman Salvatore Melisi, Trackmen Tony Bufo, Track Equipment Operators Frank Vodapivc, Ronald Roach and Watson C. Whitbeck, who were assigned to Gang No. 301, each be allowed a wage adjustment to provide them with the difference in pay between what they did receive at their respective straight time rates and what they should have received at their respective overtime rates for service performed from 4:00 A. M. to 6:00 A. M. on July 7, 8 and 9, 1964, and in addition thereto they also should be allowed the same number of hours at their respective straight time rates as they would have received had they not been required to suspend service prior to 2:30 P. M. on July 7, 8 and 9, 1964.

(3) Extra Gang Foreman Alfred P. Scorzafava, Trackmen Paul Pierce and Andrew Gill, Track Equipment Operators Alfred Lavoie, Earl G. La Fountain and Antonio DeSimone, who were assigned to Gang No. 302, each be allowed a wage adjustment to provide them with the difference in pay between what they did receive at their respective straight time rates and what they should have received at their respective overtime rates for service performed from 2:30 P. M. to 9:00 P. M. on July 7, 8 and 9, 1964, and in addition thereto they also should be allowed the same number of hours at their respective straight time rates as they would have received had they not been required to suspend service from 6:00 A. M. to 12:30 P. M. on July 7, 8 and 9, 1964.

EMPLOYES' STATEMENT OF FACTS: The claimants are regularly assigned to their respective positions in Extra Gangs Nos. 301 or 302. Their regular starting time is 6:00 A. M. Their hours of assignment are from 6:00 A. M. to 2:30 P. M. Monday through Friday of each week, with thirty minutes allowed for the noon meal period.

In accord with these instructions, the claimants named in Part (2) of this dispute worked from 4:00 A. M. to 12:30 P. M. on July 7, 8 and 9, 1964, and the claimants named in Part (3) hereof worked from 12:30 P. M. to 9:00 P. M. on the same dates. For the service performed by the claimants on each of the three dates set forth above, the Organization has instituted claim for payment of straight time rates for all time held off work during the hours 6:00 A. M. to 2:30 P. M., and for overtime rates for all time worked outside of these hours. The claim has been denied at all levels of appeal on the property.

**OPINION OF BOARD:** Claimants held regular positions in Extra Gangs 301 and 302 with assigned hours of 6:00 A. M. to 2:30 P. M. These assigned hours were changed for July 7, 8, and 9, 1964, as Extra Gang No. 301 worked from 4:00 A. M. to 12:30 P. M. and Extra Gang No. 302 worked from 12:30 P. M. to 9:00 P. M. Effective July 10, 1964, Claimants returned to their regular assigned hours of service — 6:00 A. M. to 2:30 P. M.

The Employes argue that Carrier's action was in violation of Rules 15 (d) and 15 (e) of the Agreement and 17 (b), in that the change of hours of assignment were made temporarily for three days, which was done to avoid application of the overtime rules. Further, that the parties have agreed on an interpretation to the provisions of Rules 15 (d) and 15 (e) whereby Carrier's action in the instant case was not one of an emergency nature, which constitutes the single exception to these two rules. Claimants should therefore be compensated for the time they were withheld from the hours of their regular assignment, at straight time rate of pay and for the hours worked prior to and subsequent to their regularly assigned hours at the time and one-half rates.

It is the position of the Carrier that the rules of the current agreement were not violated when a bona fide two shift operation was established and utilized on July 7, 8, and 9, 1964, as the rules in question make no mention of a two-shift operation, nor prohibited or restricted by rules of the Agreement.

> "Rule 15 (d). The starting time of the work period for regularly assigned service will be designated by the proper supervisory officer and will not be changed without first giving employes affected thirty-six (36) hours' notice."

> "Rule 15 (e). Employes working single shifts regularly assigned exclusively to day service will start their work period between 6:00 A. M. and 8:00 A. M., except in unusual situations which necessitate a regular starting time outside of this period."

> "Rule 17 (b). Employes will not be laid off for the purpose of absorbing overtime."

The Board must consider the aforequoted rules of 15 (d) and 15 (e) together, in that Rule 15 (d) provides that the starting time of the work period for regularly assigned service ". . . will not be changed without first giving employes affected thirty-six (36) hours' notice"; and that the employes referred to in Rule 15 (e) will start work between 6:00 A. M. and 8:00 A. M." **. . . except in unusual situations which necessitate a regular starting time outside of this period."** (Emphasis ours.)

We find that the wording of Rule 15 (e) is clear when it provides that even when Employes work single shifts regularly assigned to day service, Carrier may, when in its discretion, or an unusual situation exists, assign a regular starting time outside of the 6:00 A. M. and 8:00 A. M. period. This prerogative of Carrier however, must be reasonable and not arbitrarily exercised. See Award 3039. From the evidence in the record, Carrier had complied with Rule 15 (d), therefore neither Rule 15 (e), or 17 (b) restrained Carrier from changing the hours in the present situation.

Rule 15 (e) is not applicable since it applies solely to single shifts. The instant case concerns double shifts which are not prohibited by any rule of the agreement, therefore Carrier is not estopped from establishing a two shift operation. See Award 13802.

The Organization argues that there is an agreed upon interpretation between the parties of Rules 15 (d) and (e) to the effect that unless an emergency arises, Claimants starting time cannot be changed. The Organization relies upon a letter which the General Chairman received from Vice President McGuire, in which McGuire stated his views of the interpretation of Rules 15 (d) and (e) appearing upon Page 35 of the Agreement, effective November 15, 1943. From the letter quoted by the Organization in their Ex-Parte Submission, we do not find that the parties expressly agreed that the starting time could not be changed unless an emergency situation existed. If that had been the intent of the parties, Rule 15 (e) would have so read ". . . except in emergency situations," not "unusual situations." Regardless, the rules in question do not mention a two shift operation and Rule 15 (e) is not applicable. (Supra.)

On July 1, 1964 it became apparent to the Carrier that in the construction of a new track segment to provide better service for its patrons, being approximately two and one-half miles in length, there was a need to accelerate construction, inasmuch as additional mechanical equipment for the project was not immediately available. Due to this necessity or unusual situation, Carrier on July 3, 1964 determined that a second shift was necessary to bring the work up to date. We do not find that in so doing that Carrier acted unreasonably or arbitrarily in exercising its managerial discretion in accordance with its business requirements, inasmuch as mechanical equipment was not available to accelerate construction. Carrier's conduct was justified in establishing a two shift operation to satisfy service demands. See Award 13139. Petitioner has not sustained the burden of rebutting the showing that the change of starting time was not reasonable or necessary or an unusual situation.

Rule 17 (b) is not applicable which states: "Employes will not be laid off for the purpose of absorbing overtime." Claimants hours were changed in accordance with the Agreement, therefore, Claimants worked the regular hours of their assignments and were not laid off for the purpose of absorbing overtime to avoid application of the overtime rules.

The Claims will be denied. Awards 3309, 13139 and 13802.

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 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 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 17th day of February 1967.

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