

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20327
Docket Number CL-20438

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steam-
(ship Clerks, Freight Handlers, Express
(and Station Employees
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7428) that:

1. The Carrier violated the rules of the current Clerks' Agreement which became effective March 3, 1970, when it, on July 24, 1972, assigned I.S.C. Clerks at the 44th Avenue Office in Minneapolis, Minnesota, to starting times other than between 6 a.m. and 8 a.m., 2 p.m. and 4 p.m. and 10 p.m. and midnight.

2. The Carrier shall now be required to compensate the following I.S.C. Clerks and/or their successors as follows:

Ed Burns - One hour overtime for July 24, 1972, and each succeeding day thereafter that he is required to work 9 a.m. to 5 p.m.

Wm. Delmege - Two hours overtime for July 24, 1972, and each succeeding day thereafter that he is required to work 10 a.m. to 6 p.m.

R. L. Wendling - Two hours overtime for July 24, 1972, and each succeeding day thereafter that he is required to work 10 a.m. to 6 p.m.

OPINION OF BOARD: This case involves a controversy concerning the interpretation of Rule 35 and the application of such rule, as interpreted, to the facts of this dispute.

The facts are relatively simple. The Carrier's Industrial Service Center, Minneapolis, Minnesota, operates on a 24 hour basis, seven days a week. "Three consecutive shifts", as such term is used in Rule 35, were worked at the Center at all times relevant to this dispute. On July 5, 1974, the Center's personnel complement consisted of twelve clerical positions under a schedule providing for six clerks during the hours of 7 a.m. to 3 p.m., four from 3 p.m. to 11 p.m., and two from 11 p.m. to 7 a.m. On July 24, 1972, the Carrier rearranged the schedule so that clerical position #2 worked

9 a.m. to 5 p.m., and positions #7 and #8 worked from 10 a.m. to 6 p.m. On August 1, 1972, there was a further rearrangement, resulting in two positions working 9 a.m. to 5 p.m. and one working 10 a.m. to 6 p.m. (The Employees do not comment on the August 1 rearrangement, but this does not affect the issue.) Rule 35 reads as follows:

"RULE 35. STARTING TIME ASSIGNMENTS

A. Where three consecutive shifts are worked covering the twenty-four (24) hour period, the starting time of each shift shall be between the hours of 6:00 A.M. and 8:00 A.M., 2:00 P.M. and 4:00 P.M., and 10:00 P.M. and 12:00 midnight. Where other than three consecutive shifts are worked, no shift shall have a starting time between 12:00 midnight and 6:00 A.M., unless mutually agreed between the Management and the General Chairman.

B. Additional regular positions, other than three consecutive shifts, may have a starting time other than those specified in paragraph A, except that no such position shall have a starting time between 12:00 midnight and 6:00 A.M.

C. Consecutive shifts mean where employees doing the same class of work relieve each other with no intervening time."

The Employees assert that the changes on the three positions amounted to the establishment of additional shifts to perform the same class of work assigned to the Center's three consecutive shifts and that, therefore, the starting times of the shifts are violative of Rule 35 (a). In support of this position the Employees interpret Rule 35 as meaning that where the prevailing situation involves three consecutive shifts and the Carrier desires to assign additional regular positions to perform the same class of work being performed on such shifts, such additional positions must be given starting times which conform with the starting time provisions in paragraph (a) of Rule 35. Contrarily, the Carrier says that:

"...if three consecutive shifts are worked, but the Carrier desires to assign other employees in addition to those involved in the three consecutive shifts, it may start them at any time except

"between midnight and 6:00 p.m."

In appraising these opposing positions, we have studied all of the Awards cited by the parties. None was instructive on the issue here. For example, the Employee cited Award No. 685 passed on a rule having a text similar to herein paragraph (a), but the rule did not have any language comparable to herein paragraph (b). And while the Carrier cited Award No. 6873 contains language seemingly favorable to Carrier's position herein, the Award in fact rejected a claim that Carrier changed the starting time of three men from 11:50 p.m. to 12:00 midnight for the purpose of avoiding overtime; thus, the issue in that award and the one here are not the same. The issue here is does Rule 35, in its entirety, require the two positions involved in this case to be scheduled in conformity with the starting times in paragraph (a) of the rule, or with paragraph (b). The Carrier's position on the meaning of the rule seems to be that once Rule 35(a) is complied with, the Carrier may use Rule 35 (b) without limit. More specifically, under this construction, if a single employee is assigned to each of three consecutive shifts, Rule 35 (a) would be completely fulfilled and the Carrier would no longer be bound by its starting time provisions. The starting time provisions of Rule 35 (b) would apply. The end result would be that, after three employees are properly assigned under Rule 35 (a), any number of additional employees could be regularly assigned to perform the same class of work being performed on the three consecutive shifts by the three employees, and the starting times of the additional employees could be at any time of day except midnight to 6 a.m., as provided by Rule 35 (b). Obviously, this construction of Rule 35 must be rejected because it would give the clarification or exception in paragraph (b) a meaning which renders nugatory virtually all of the purpose and intent set out in the basic provision in paragraph (a).

Rule 35 is written in straightforward, unambiguous language. In the context of this case, it simply means that where employees doing the same class of work relieve each other with no intervening time in a 24 hour period, the situation constitutes "three consecutive shifts" under paragraph (a) of the rule and, thus, is governed by the starting time provisions of that paragraph. If one or more additional employees are regularly assigned to the same class of work being performed on the three consecutive shifts, their starting times must also conform with the starting time provisions of paragraph (a). However, if the Carrier desires to establish additional regular positions to perform work which is different from the class of work being performed on the three consecutive shifts, the Carrier is permitted to do so under paragraph (b) of the rule and, in

this instance, the starting times in paragraph (a) are not applicable. The starting times may be at anytime except between midnight and 6:00 a.m., as expressly provided in paragraph (b). We conclude therefore that the Employees' interpretation of Rule 35 is correct.

However, on the record before us, Rule 35 cannot be said to have been violated. Self-evidently, the Employees have the burden of showing by probative evidence that the three positions placed outside the starting times in Rule 35 (a) were, in fact, assigned to the same class of work performed on the three consecutive shifts. The Employees have not provided such evidence and the Carrier has made no admission which relieves them of the burden of doing so. We note also that the bulletins on the three re-scheduled positions, which were included in the Employees' Submission, shows that two of the positions have identical duties while the third has different duties. We recognize, of course, that job bulletins are not conclusive on either party in a dispute of this kind; nonetheless, the bulletins are noteworthy to indicate that such evidence as has been offered does not support the Employees' position. We shall deny the claim.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulke
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.

LABOR MEMBER'S CONCURRING AND
DISSENTING OPINION TO
AWARD 20327 (DOCKET CL-20438) (BLACKWELL)

Infrequently, the members of the Third Division of the National Railroad Adjustment Board unanimously vote on the adoption of a Referee's proposed decision in a Docket that has been deadlocked. Award 20327 (Docket CL-20438) (Blackwell), is one of the rare disputes that has been unanimously adopted. The Labor Members voted with the Carrier Members and the Referee in the adoption of Award 20327 in spite of the fact that the Award denied payment of the monetary portion of the claim. The Labor Members found it prudent to vote for the adoption of Award 20327 because of its substantive finding on the interpretation of Rule 35 concluding that:

" . . . the Employees' interpretation of Rule 35 is correct."

The Labor Members, however, find it necessary to dissent to the last paragraph of the Opinion of Board. The record in this dispute did in fact contain adequate probative evidence that the three positions placed outside the starting times in Rule 35 (a) were in fact performing the same class of work performed on three consecutive shifts. One need only review Carrier's own ex parte submission to substantiate this:

"On July 3, 1972, the Carrier established an Industrial Service Center in that office, combining in one location the functions dealing with industry service previously performed at widely separated locations in the terminal. Two ISC clerk positions were established on that date working from 7:00 AM to 3:00 PM. On July 5, 1972, ten additional ISC clerk positions were established in the Industrial Service Center, four working from 7:00 AM to 3:00 PM, four working from 3:00 PM to 11:00 PM and two working from 11:00 PM to 7:00 AM.

"As indicated by its designation, the purpose of the Industrial Service Center is to serve as a liaison between the customer's needs on the one hand and the various departments of the railway which fulfill those needs on the other. It handles such functions as car orders, car releases, requests for spotting or re-spotting of cars, notifying customers of car arrivals, etc., and is intended to minimize the possibility of losing or distorting information received from or given to an industry served by the Carrier as well as to provide a unified record of all customer contacts.

"It soon became evident that broader coverage was needed during certain hours of the day in the Industrial Service Center to coincide with working hours of the customers, while at other hours the needs were minimal.

"Therefore, the existing assignments were abolished and re-established effective July 24, 1972 so that as of the claim date the Industrial Service Center was staffed with the following assignments:


<u>Position</u>	<u>Hours of Assignment</u>
#1 - ICS - Car Orders	7:00 AM to 3:00 PM
#3 - ICS - Misl.	7:00 AM to 3:00 PM
#4 - ICS - Misl.	3:00 PM to 11:00 PM
#5 - ICS - Misl.	11:00 PM to 7:00 AM
#6 - ICS - Misl.	8:00 AM to 4:00 PM
#2 - ICS - Car Orders	9:00 AM to 5:00 PM
#7 - ICS - Misl.	10:00 AM to 6:00 PM
#8 - ICS - Misl.	10:00 AM to 6:00 PM

With this change, the Carrier was able to provide staffing to meet service needs during peak customer hours as follows:

7:00 AM to 8:00 AM	2 ISC Clerks
8:00 AM to 9:00 AM	3 ISC Clerks
9:00 AM to 10:00 AM	4 ISC Clerks
10:00 AM to 3:00 PM	6 ISC Clerks
3:00 PM to 4:00 PM	5 ISC Clerks
4:00 PM to 5:00 PM	4 ISC Clerks
5:00 PM to 6:00 PM	3 ISC Clerks
6:00 PM to 7:00 AM	1 ISC Clerks"

These four paragraphs quoted from Carrier's Statement of Facts clearly demonstrate that all positions in the Industrial Service Center performed the same class of work.

Award 20327 should have sustained the claim for compensation as well as upholding the Organization's interpretation of Rule 35.


J. C. Fletcher
Labor Member
8-20-74