

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22036
Docket Number SG-21856

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation
(Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the former Pennsylvania
Railroad Company:

System Docket 1183
Central Region - Valley Division Case 4-75

Claim that the carrier violated the current Signalmen's Agreement and particularly article 4 section 22 (a), Article 2 Section 8 (b) and article 2 section 14 (b) when on or about February 24, 1975 all employees on seniority district 17, 17A and 17B were ordered by the carrier Officials to report for work at 8:00 am (DST) instead of their regularly advertised starting time of 7:00 am (DST) without their positions being abolished and readvertised as called for in the above stated rules.

Claim that this action was taken in an arbitrary manner without cause or reason and without consent of this organization and by doing so the end of the tour of duty was extended from 3:30 pm (DST) to 4:30 (DST) and the lunch period from 11:00 am (DST) to 12:00 pm (DST) thereby placing these employees on an overtime status under the provisions of article 2 section 8(b) and article 2 section 14 (b).

Claim that each and every employee affected be paid one and one half (1 1/2) hours at the overtime rate of one and one half (1 1/2) for each assigned working day beginning with February 24, 1975 and continuing until such time that this illegal practice is discontinued.

(Claim should be allowed as presented because the Superintendent-Labor Relations did not render a timely decision on the Local Chairman's appeal dated May 12, 1975, as required by Article V of the August 21, 1954 National Agreement).

OPINION OF BOARD: This claim arose as a consequence of the decision of the Federal Government to extend Daylight Savings Time so as to commence on February 23, 1975, rather than the end of April, as part of the response to the continuing nation-wide acute fuel shortage. Prior to February 28, 1975, Claimants had been assigned regularly scheduled hours of 7:00 A.M. to 3:30 P.M. Eastern Standard Time. With the imposition of winter Daylight Savings Time in 1975, the Carrier placed Claimants on a schedule of 8:00 A.M. to 4:30 P.M. Daylight Savings Time. The effect of this was to keep the Claimants on the same "sun-time" schedule as was the case prior to the imposition of winter Daylight Savings Time. The Organization's claim and the Carrier's defense both rest on Article 4, Section 22, of the applicable Agreement which reads in part:

"(a) When any of the following changes occur in a regular position the position shall be re-advertised:

- (1) A change in assigned working days.
- (2) A change in assigned starting time.
- (3) A material change in location of headquarters.
- (4) A material extension of territory.
- (5) A material change in the character of a plant or section.
- (6) A change in rate of pay except a change resulting from the application of a general wage increase or decrease.

(b) Changes in starting time caused by the adoption of Daylight or War Saving Time shall not be considered cause for advertisement of the position."

Even if merit were found in the claim that the new schedule was "a change in assigned starting time", the Carrier's right to make such change without re-advertisement of the positions is covered in Section 22(b). No suggestion is made that the change resulted from other than the consequences of Daylight Savings Time.

The Board finds no violation of the rules because of the adaption of hours to Daylight Savings Time. It follows, therefore, the claims are without foundation as to overtime pay for the final hour of the eight-hour schedule (Article 2, Section 8(b)), and as to arrangements for meal period (Article 2, Section 14 (b)).

Award No. 21752 (Eischen) concerns the same Organization and Carrier, and deals with an identical claim, although from circumstances arising one year earlier. Award No. 21476 (Eischen) also rules on a similar circumstance, although a different Rule violation was alleged. In denying the merits of the instant Claim, the Board endorses fully the findings in Award Nos. 21752 and 21476.

In this case, however, the Organization raises a separate procedural matter which requires resolution. After the initial denial of the claim by the Carrier, the Organization appealed the denial by letter of May 12, 1975. In a later letter of July 22, 1975, the Organization stated that it had received no denial of the appeal from the Carrier and, since the specified 60-day limitation had passed, the Organization argued that the Claim "is now payable."

Carrier advised the Organization by letter of July 25, 1975, that it had replied to the appeal on May 22, 1975, transmitting a copy of such answer to the Organization. The July 25 letter and enclosure were sent by mail, according to the Carrier, by the identical means and method of address as its original May 22, 1975, letter.

The Board finds that the Organization has made no substantive case as to the Carrier's failure to comply with time limits of the appeal procedure. While it may well be that the Organization failed to receive the original copy of the May 22 letter, no convincing evidence was presented to show that the Carrier had not sent the letter. No attempted evasion of the procedure was shown, and all correspondence from the Carrier in the matter was particularly prompt.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.

