

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes)	Case No. 49
and )	Award No. 49
St. Louis Southwestern Railway Company )	

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by assigning the members of Extra Gang No. 55, Foreman D. L. Fordham, et al., to a starting time of 12:00 noon on April 18, 1960 and continuing thereafter.

2. The Carrier shall now compensate members of Extra Gang No. 55, named in our Statement of Facts, at the time and one-half rate for the hours of service rendered by them between 12:00 noon and 3:00 p.m., and shall further compensate these employees for 8 hours at their straight-time rate beginning at 3:00 p.m., less compensation already paid for said service, beginning with the first work day of this new assignment of April 18, 1960 and continuing until this violation of the Agreement is ceased.

FINDINGS:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

The factual situation is not in dispute. On April 11, 1960, the Carrier notified the claimants that their starting time, beginning April 18, 1960, would be at 12:00 noon and end at 8:00 p.m. This was a change from their starting time of 7:30 a.m. to 4:30 p.m. This change of the starting time continued from April 18, 1960 through May 11, 1960.

It is the Carrier's contention that Rule 7-13 refers to single shift days, single shift day and night and single shift night during a twenty-four period, and that it does not refer to a double shift during a twenty-four hour period, that under Rule 7-13 (e) the Carrier has the right to change the starting time and work a double shift for regular operations necessitating working periods varying from those fixed for the general force, under Section (b), (c), and (d), and that the hours to work will be assigned in accordance with the requirements of the Carrier.

It is the Organization's contention that Rule 7-13 refers to a daytime shift, which must start between the hours of 6:00 a.m. and 8:00 a.m., and a day and night shift, which must start between the hours of 3:00 p.m. and 6:00 p.m., and a night shift, which must start between the hours of 6:00 p.m. and 9:00 p.m., meaning that this rule contemplates the Carrier may put on three shifts within a twenty-four hour period, but they must start these shifts within the hours specified under the rule.

The Organization further states that Rule 7-13 (e) refers to regular assignments and the Carrier cannot for its own purpose change the starting times as outlined in Rule 7-13.

The Carrier states that the reason for the change in the starting time and the reason a double shift was worked was due to the fact that its 1958 program of tie renewal and general track rehabilitation program was falling behind in April, 1960.

The Organization states that the reason that the Carrier changed the starting time of the claimants was due to the fact that they wanted to utilize certain rented machinery during the sixteen-hour period of each day.

The Organization relies upon Award No. 4109 of the Third Division in its contention that the Carrier is precluded from changing the starting time under Rule 7-13 (e).

The Board finds that the Organization has failed in its proof to show that the reason that the Carrier put on the two shifts with the starting time of one at 4:00 a.m., and the other at 12:00 noon was due to the fact that it wanted to utilize certain machinery that it had rented.

The carrier, on the other hand, has shown by its proof that the reason that they put on two shifts starting April 18, 1960 was due to the fact that its tie renewal and general track rehabilitation program had fallen behind in April, 1960.

Upon examination of the submissions and review of the arguments advanced by the parties, it becomes apparent that the sole question involved in this case is whether the effective agreement permits the Carrier to change the regular hours of service of employees for regular operations by the process of giving them thirty-six hours notice of its intention to do so, and in accordance with Rule 7-13 (e).

Rule 7-13 of the effective agreement, on which both parties rely, as sustaining their position reads as follows:

"7-13. STARTING TIME. - (a) The starting time of the work period for regularly assigned service will be designated by the supervisory officer and will not be changed without first giving employees affected thirty-six (36) hours' notice.

"SINGLE SHIFT DAYS. - (b) Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6 a.m. and 8 a.m.

"SINGLE SHIFT, DAY AND NIGHT. - (c) Employees working single shifts, regular assigned exclusively to part day and part night service, will start work period between 3 p.m. and 6 p.m.

"SINGLE SHIFT NIGHT. - (d) Employees working single shifts, regularly assigned exclusively to night service, will start work period between 6 p.m. and 9 p.m.

"VARIATION. - (e) For regular operations necessitating working period varying from those fixed for the general force as per sections (b), (c) and (d) above, the hours of work will be assigned in accordance with the requirements.

"BEGINNING AND ENDING OF DAY. - (f) Employees time will start and end at designated assembling points for each class of employees."

Award No. 4109 of the Third Division, upon which the Organization relies, is based upon Rule 18 of the Agreement between the Brotherhood of Maintenance of Way Employees and the Missouri Pacific Railroad Company and reads as follows:

"Regular assignments will have a fixed starting time and regular starting time will not be changed without at least thirty-six (36) hours' notice to the employees affected, except as otherwise agreed between the employees and local supervisory officers based on actual service requirements."

It will be noted that Rule 18 talks about regular assignments and the Board found that the Carrier, when it changed the hours of service of the claimants in that case, did not make the change as a regular assignment but as a temporary assignment and this is the reason that part of the claim was sustained by the Board. Rule 7-13 (e) of the Agreement before us does not talk about regular assignments but states the variation may be made for regular operations. The claimants herein were performing their regular operation, that is, they were performing the work that is normally performed by these employees. This is the reason that the claim resulting in Award No. 4109 is distinguished from this claim.

The Board finds that under Rule 7-13 (e) entitled "VARIATIONS" the Carrier has the right in the performance of regular operations, which necessitates working periods varying from those fixed for the general force in sections (b), (c) and (d), to assign hours of work in accordance with its requirements.

AWARD: Claim denied.

(Signed) Thomas C. Begley  
Thomas C. Begley, Chairman

(Signed) A. J. Cunningham (Dissenting)  
A. J. Cunningham, Employee Member

(Signed) M. L. Erwin  
M. L. Erwin, Carrier Member

(Concurring opinion attached)

Dated at Tyler, Texas  
December 14, 1964.

CONCURRING OPINION OF CARRIER MEMBER  
AWARDS 49, 50, 51, 52, 53, 54, 55.

I concur in the decision that the restrictions relating to single shift operations did not apply under the conditions existing in these cases and that the claims should be denied, but it is my understanding the limitations in the rule apply only to single shift operations and that the carrier is not restricted as to starting time when two or more shifts are established, as in these cases.

(Signed) M. L. Erwin  
M. L. Erwin, Carrier Member