

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 366.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
and)	Case No. 1
TEXAS AND NEW ORLEANS RAILROAD COMPANY)	Award No. 1

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the effective Agreement by assigning the employes of Extra Gang No. 345 at Lobo, Texas, to work from 3:30 p.m. to 11:30 p.m. at the pro rata rate of pay beginning November 5, 1959, and continuing for the duration of such an assignment.
2. That Foreman George L. Dirr; Juan Gonzales, Laborer; Guillermo Ortiz, Laborer; W. H. Rainey, Jr., Machine Operator; W. A. Nunley, Machine Operator, and B. J. Middleton, Machine Operator, be now reimbursed for the difference in the straight time pro rata rate of pay allowed them and the time and one half rate of pay which they should have received for this performance of work in overtime hours during the period referred to and continuing until this violation of the Agreement is discontinued or the position abolished.
3. Laborer Jacinto Carrillo now be reimbursed for the difference between the straight time pro rata rate of pay allowed him and the time and one half rate of pay which he should have received while working in Extra Gang No. 345 during the hours 3:30 p.m. to 11:30 p.m. on November 9-10-11-12 and 13, 1959.
4. Laborer Benjamin Navarette be now reimbursed for the difference between the straight time pro rata rate of pay allowed him and the time and one half rate of pay which he should have received while working in Extra Gang No. 345 from 3:30 p.m. to 11:30 p.m. on November 10-11-12 and 13, 1959.
5. Laborer Severiano Licon be now reimbursed for the difference between straight time pro rata rate of pay allowed him and the time and one half rate of pay which he should have received while working in Extra Gang No. 345 from 3:30 p.m. to 11:30 p.m. beginning November 16, 1959 and continuing for the duration of this assignment.
6. The Carrier violated the effective Agreement by failing to compensate at the time and one half rate the above named employes for the time that they were required to travel between the location of their mobile trailer camps and the location of their work, on November 5-6-9-10-11-12 and 13, 1959 (Carrillo's travel time claim is only for November 9-10-11-12 and 13; also Navarette's travel time claim is only for November 10-11-12 and 13, 1959). They should be now compensated for such overtime service.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employe 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.

This claim originated as a result of Carrier assigning the crew of Extra Gang No. 345 and a complement of roadway machine operators to work 3:30 p.m. to 11:30 p.m. daily, Monday through Friday, each week, pursuant to letter agreement executed by Division Engineer F. B. Calhoun of the San Antonio Division and District Chairman L. A. Billings of the Brotherhood of Maintenance of Way Employes, the agreement being dated October 6, 1959, the assignment being placed in effect on November 5, 1959. The Carrier states that the starting time agreed to in the said agreement was in accordance with Article XV, Rule 4, of the Agreement with the Organization, effective June 1, 1950. The provision for the continuous service, 3:30 p.m. to 11:30 p.m. with 20 minutes period in which to eat, was in accordance with Article IX, Rule 1, second paragraph.

Carrier states that prior to the execution of the agreement of October 6, 1959, various verbal efforts had been made by Carrier's local officers to secure a mutual understanding with the Employes' Committee to establish a starting time for the second shift gang and complement of roadway machine employes to meet service requirements, as provided in Rule 4 of Article XV. Carrier's local officers, in each instance, were verbally advised that no such understanding could be reached, due to instructions from the General Chairman not to reach any such understanding. Carrier then discussed the matter in conference with the General Chairman after an exchange of letters. It became obvious that the General Chairman would not agree to the proposed starting time and the Carrier made a decision that the proper procedure would be to follow the rule explicitly by having one of the Carrier's local officers submit a specific request to District Chairman Billings. Such request was made by Division Engineer F. B. Calhoun of the San Antonio Division to District Chairman L. A. Billings, who was in a position to appraise the request for the setting up of the second shift extra gang and complement of roadway machine operators, based on the service requirements of which Mr. Billings was familiar due to his employment on the territory involved. The discussion between Division Engineer Calhoun and District Chairman Billings resulted in the agreement dated October 6, 1959, signed by these two local officers of the Carrier and the Organization, respectively.

The Employes state that under date of October 8, 1959, Division Engineer F. B. Calhoun issued to all concerned Vacancy Bulletin No. 756, which read as follows:

"Bulletin #756 - Temporary Foreman Position, Gang 345. This gang will be assigned mobile camp cars with mobile tool house. Daily hours of assignment are from 3:30 p.m. to 11:30 p.m."

Under date of November 24, 1959, System Secretary-Treasurer A. F. Behrens filed a claim in behalf of the Claimants named in the claim and for the dates as specified. At the same time, he filed a claim for 30 minutes of travel time between the location of the mobile trailer camp and the location of the work on the dates as named in this claim.

The Employees state that Article XV - Rule 4, provides that a mutual understanding between the local officers of the Carrier and the Employees Committee must be made to arrange the starting time of single shift operations to meet service requirements because of train movements or other such allied problems requiring that the regular starting time of the shift be changed. The establishment of a two-shift operation not heretofore in effect on this Carrier under this Agreement can only be done by negotiations with the parties involved and with the General Chairman and his Committee. No District Chairman has the authority to negotiate and put into effect such an extraordinary change in the working conditions of the employees under this Agreement.

Employees further state that Section 10, of the System Federation By-Laws, outlines the duties of the System Officers in the following manner:

"The General Chairman, Vice Chairman, Assistant Chairman and Secretary-Treasurer will constitute the schedule committee and shall be empowered to negotiate with the Management of the Southern Pacific Railroad and any federated lines for rates of pay and working conditions for all employees coming under the jurisdiction of this Board. During such negotiations the General Chairman or someone designated by him will be the spokesman for the Committee."

In Section 10 (a) of the By-Laws the duties of the System Officers are outlined, as are the duties of the District Chairman, as follows:

"The General Chairman may handle grievance cases or direct the handling of such cases with the Management. The District Chairman may handle grievance cases on his respective District with his Division Officers. System Officers may handle grievance cases on any District. When in doubt of the merit or handling of cases the District Chairman will consult the General Chairman and will be governed according to the General Chairman's instructions."

The sole question to be decided in this claim is whether or not the Agreement dated October 6, 1959, signed by District Chairman L. A. Billings for the Employees and by F. B. Calhoun for the Carrier, is valid and binding under Article XV, Rule 4 of the effective Agreement of June 1, 1950.

Article XV, Rule 4 reads as follows:

"Rule 4. The starting time of the work period shall be arranged by mutual understanding between the local officers and the employees' committee based on actual service requirements."

The Carrier contends that this Rule was promulgated by the U. S. Railroad Labor Board in its Decision No. 501. That Board was then resolving a dispute between the claimant organization in this case and the Carrier as to what constituted fair working rules. At the time said Board was considering the dispute, the so-called

National M of W Agreement, effective December 16, 1919, was in operation and under review. Those parts of Article V of the National Agreement dealing with the question of starting time read as follows:

"Starting time--(c-2) 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--(c-3) 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-4) Employees working single shifts, regularly assigned exclusively to part day and part night service, will start work period between 3 p.m. and 6 p.m.

"Single shift night--(c-5) Employees working single shifts, regularly assigned exclusively to night service, will start work period between 6 p.m. and 9 p.m.

"Variation--(c-6) For regular operations necessitating working period varying from those fixed for the general force as per sections (c-3), (c-4) and (c-5), the hours of work will be assigned in accordance with the requirements."

At the time the U. S. Railroad Labor Board rendered its Decision No. 501, it handed down the rule now in dispute, and at the same time, rendered its interpretation of the rule, reading as follows:

"(C-1) Beginning and end of day--The starting time of the work period shall be arranged by mutual understanding between the local officers and the employees' committee based on actual service requirements.

- (c-2) Provided for in c-1 of Article V.
- (c-3) Provided for in c-1 of Article V.
- (c-4) Provided for in c-1 of Article V.
- (c-5) Provided for in c-1 of Article V.
- (c-6) Provided for in c-1 of Article V."

The Carrier states that the National Agreement rule provided for various starting times for single shifts and for variation. And that the U. S. Railroad Labor Board referred to each and every one of the shift sections of the National Agreement quoted above and interpreted its own new rule as to each; that the same type shifts were provided for in c-1, Article V of Decision 501. Thus, it gave the Carrier the right to assign Maintenance of Way Employees, either to single shift days; single shift, day and night; single shift night; or the variation of these shifts. Carrier contends that it is a primary principle that when a rule is adopted the interpretations then applying to the Rule likewise are carried forward and

applied in the future operation of the Rule. In other words, Rule 4, Article XV of the current Agreement still is subject to the same interpretation as the starting times of various shifts as was placed on it by the Labor Board in its Decision No. 501. Rule (c-1), as written by the U. S. Railroad Labor Board, is the same Rule that we have before us as written in the effective agreement of June 1, 1950. It is true that this Rule referred to single shift days, single shifts, day and night, single shift night and variation. However, in the agreement between the Maintenance of Way Employees and this Carrier, this Board finds that nowhere in any of the contracts has there been any other than a day shift for the Maintenance of Way Employees of this Carrier. Agreements have been negotiated under this Rule between the Carrier and the Committee, the Committee speaking through the General Chairman for a change in starting times. One of the Agreements was entered into between the Carrier and the District Chairman after the District Chairman had been delegated those powers by General Chairman Reddick. The agreements made about March 14, 1955 under this Rule were negotiated between the Carrier and Mr. Chrisco, who was Vice Chairman of the Maintenance of Way Employees and had been designated by the Committee to speak for the General Chairman. He also was District Chairman.

Carrier offered in evidence an agreement between it and a District Chairman dated December 14, 1956 and one dated June 25, 1957 in regard to the changing of the starting time of the work period due to service requirements. However, this Board has no way of knowing whether or not the employees' Committee had delegated its authority to the District Chairman to enter into these agreements on their behalf or whether or not the District Chairman entered into the agreements on his own initiative. If the District Chairman entered into the agreements without the consent of the Employees' Committee changing the starting time due to actual service requirements, the Brotherhood has never filed a grievance. Agreements of this nature cannot change the unambiguous wording of Rule 4 of Article XV if they were entered into by the District Chairman without authority of the Employees' Committee. Therefore, these two agreements could not set up a past practice.

We find no past practice established whereby the local officers of the Carrier have negotiated with a District Chairman for a change in the starting time of a work period.

In March this Carrier started to negotiate with the Employees' Committee and the General Chairman for the second shift, but was unable to reach an agreement with the General Chairman or the Employees' Committee. Thereafter, the Carrier had its local officer, Division Engineer F. B. Calhoun, negotiate an agreement with District Chairman L. A. Billings for a change in the starting time of these employees. Billings had not been designated this authority by the Committee or through its spokesman, the General Chairman. In fact, Billings had been warned not to negotiate such an agreement by the General Chairman.

The Awards cited by the Carrier in which it takes solace that it has the right to unilaterally change the starting time of assignments and to put on a second shift after an agreement could not be reached, were awards where claims were sustained under different rules than the rule that appears in this Agreement. Most of the rules in the sustaining awards state that the Carrier may change the starting time and put on additional shifts when they give the employees thirty-six (36) hours notice. That rule does not appear in this Agreement.

Agreements of this type, in which one of the parties is expressly forbidden to perform any acts without the agreement of the other and where the rule spells out who shall act for both of the parties, would be rendered meaningless if the application of such provision could be declared inapplicable by the Carrier, because it could not reach an agreement with the designated party of the Employees. Under such an agreement, the Carrier does not have the right to unilaterally change the starting time of these employees, nor to put on a second shift without an agreement with the Employees' Committee. The Employees' Committee does not mean a District Chairman.

Claim No. 6 has been settled and withdrawn.

The Board finds that the Carrier violated the effective agreement when it failed to obtain an agreement between the local officers of the Carrier and the employees' committee and assigned the employees to extra Gang No. 345 at Lobo, Texas, to work from 3:30 p.m. to 11:30 p.m. and another Gang and Operators to work from 8:00 a.m. to 4:00 p.m. without a lunch period from 12:00 noon to 1:00 p.m. The claimants shall be paid at the punitive rate for all hours worked after 5:00 p.m. on the dates of claim.

AWARD:

Claim No. 1, 2, 3, 4 and 5 sustained in accordance with the opinion. Claim No. 6 has been settled and withdrawn.

(s) Thomas C. Begley
Thomas C. Begley, Impartial Chairman

(s) J. R. Russell Dissenting
J. R. Russell, Carrier Member

(s) Arthur J. Cunningham
Arthur J. Cunningham, Brotherhood Member

Dated at Cleveland, Ohio, July 11, 1961.