

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES) Brotherhood of Maintenance of Way Employees
TO)
DISPUTE) and
St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"It is the claim of the Brotherhood that:

- "1. The Carrier violated the effective Agreement when it required B&B Gang No. 2-S; namely, W.J. Clary, Foreman, J.C. Earle and O.C. Cox, Bridgemen No. 1, and W.L. Reynolds, T.J. Simmons and D.R. Carpenter, Bridgemen No. 2, to change their regularly assigned hours, 7:00 AM to 4:00 PM, to 9:00 AM to 6:00 PM, beginning June 13, 1972, and continuing on June 14, 15, 19, 20, 22, 23, 26, 27, 28, 29, 30, July 3, 4, 5, 6, 9, and 10, 1972.
- "2. The named Claimants, and/or their successors, members of B&B Gang No. 2-S, shall now be paid two hours, 7:00 AM, to 9:00 AM per day, each Claimant, at their respective straight time rate; and two hours 4:00 PM, to 6:00 PM, per day, each Claimant, at their respective time and one-half time rate, on dates specified above, for the violation referred to in Part 1.
- "3. These named Claimants, and/or their successors, be likewise compensated for all such similar services rendered, and for the exact amount of time on each and every day, subsequent to the dates specified, and continuing until this violation of the Agreement ceases."

(Claim supplemented to include August 1, 2, 3, 4, 14, 15, 16, 17, 18, 21, 22, 23, 24, 1972)

FINDINGS:

On the dates in question, Carrier changed Claimants' regularly assigned hours from 7:00 a.m. - 4:00 p.m. to 9:00 a.m. - 6:00 p.m. The initial reason for the change was "on account getting more time

Carrier relies on Award No. 49 of this Board as support for its position. In Award No. 49, the question was whether Carrier had the right under Rule 7-13 (e) to change starting times when a double shift was established. In that dispute Carrier argued that the limitations of Rule 7-13 apply only to single shift situations. There the Board found in pertinent part:

* * *

"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 each day.

* * *

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.

* * *

"The Board finds that under Rule 7-13 (e) entitled "VARIATIONS" the Carrier has the right in the performance of regular operations, which necessitate 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." (Underscoring added).

It is clear, therefore, that Award No. 49 allowed a Carrier to vary from the starting time limitations of (b), (c) and (d) only if there was a substantive showing in the record that such variance was necessary. To hold otherwise would be to render the limitations imposed by (b), (c) and (d) meaningless.

between trains in the afternoon."

The Organization contends that the change was in violation of Rule 7-13 of the Agreement which reads:

"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 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."

In response to the Organization's final appeal, Carrier's highest designated officer stated that: "Requirements of the service necessitated change in the working period for Gang No. 2-S during the period involved which is permissible under Rule 7-13 (e)." As far as can be determined from the record, no evidence of necessity (other than the above assertions) was proffered to the Organization during the handling on the property.

Carrier takes the position that its unilateral action was permissible under Rule 7-13 (e), and that it may do so without agreement in order to meet the requirements of service consistent with efficiency and safety.

A review of the record of what transpired in the handling on the property compels the finding that there was not a substantive showing of necessity as to warrant Carrier's unilateral action. As was stated in Third Division Award No. 20065: "Carrier's objective in the instant case, i.e. to avoid idle time, does not make the requisite showing of necessity within the meaning of Award 3039 and we therefore conclude that the herein change of hours was not permitted by Rule 27.". Rule 27 in that dispute is identical to Rule 7-13(e) herein.

In view of the foregoing the claim shall be sustained. The compensation to be paid for each claim date shall be two hours straight time for the period Claimants were not allowed to work their assignments between 7:00 a.m. to 9:00 a.m., and the difference between the straight time rate and overtime rate for the work that was performed between 4:00 p.m. and 6:00 p.m.

AWARD

Claim is sustained per findings herein. Carrier is directed to make payment within 30 days of this award.

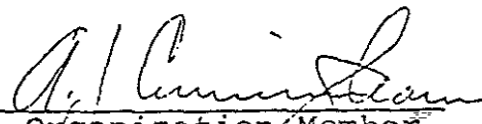


Neutral Member



Carrier Member

Date: March 18, 1977



Organization Member