

Award No. 1546

Docket No. 1456

2-C&EI-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carmen Joe Pasquale and Lloyd Hickman are each entitled to be compensated additionally at the time and one-half rate for having been changed from working on the 3:00 P. M. to 11:00 P. M. shift and the 11:00 P. M. to 7:00 A. M. shift respectively, December 21, 1949, to working on other shifts effective December 22, 1949 and that, accordingly, the carrier be ordered to so compensate these employes.

EMPLOYEES' STATEMENT OF FACTS: Carmen Joe Pasquale and Lloyd Hickman, hereinafter referred to as the claimants, are employed by the carrier at Danville, Illinois, and were regularly assigned to work the 3:00 P. M. to 11:00 P. M. shift and the 11:00 P. M. to 7:00 A. M. shift respectively, on and prior to December 21, 1949. The carrier, however, made the election to reduce the force at the close of business December 21, 1949, and this is affirmed by copy of notice dated December 14, 1949, submitted herewith and identified as Exhibit A.

Concurrently with this action, the carrier then elected to change these claimants from the aforementioned shifts to the 11:00 P. M. to 7:00 A. M. shift and a split shift job working 7:00 A. M. to 3:00 P. M., on Thursday, Friday and Saturday, and 11:00 P. M. to 7:00 A. M. on Sunday and Monday, respectively, effective December 22, 1949. In handling this dispute with carrier officials designated to handle such affairs all declined to compensate these claimants at the time and one-half rate for this change of shifts.

The Agreement effective July 15, 1944, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted to be the system federation's understanding of its aforementioned good-faith agreement with the carrier that these claimants were changed from working on the 3:00 P. M. to 11:00 P. M. shift and the 11:00 P. M. to 7:00 A. M. shift respectively, ending with

interpreted and applied the rule to the effect that employes "transferred" in the "exercise of seniority rights" did so without penalty to the company in the payment of overtime. Nothing in the present circumstances merits a reversal of this established application of the rule.

It is the carrier's position that under the language of Rule 8, providing that employes transferred in the exercise of seniority rights will do so without penalty to the company in the payment of overtime, the instant claim is without merit and must be denied. It is respectfully requested that your Board so hold.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The carmen of System Federation No. 20 contend that carrier, on December 22, 1949, should have paid Carmen Joe Pasquale and Lloyd Hickman at time and one-half instead of pro rata for the shift worked on that day in accordance with the provisions of Rule 8 of their effective agreement. They make this claim because there was a transfer of claimants' respective shifts on that date, which transfer they claim the claimants were compelled to make because of carrier's actions.

Effective as of the close of business on December 21, 1949 carrier reduced the forces at its Oaklawn Freight Car Shops by discontinuing position Job C-50, a cutter-carman. This action resulted in Melvin L. Sexton being laid off. Sexton thereupon exercised his right to displace based on his seniority. Through a series of such actions Carroll Barnett displaced Joe Pasquale, Pasquale displaced Lloyd Hickman and Hickman displaced Fred Vollmer. This resulted in both Pasquale and Hickman being transferred from one shift to another. It is upon this factual background that the claim is based.

Rule 8 of the parties' agreement, so far as here material, provides:

"Employes transferred from one shift to another in the exercise of seniority rights, . . . , will do so without penalty to the company in the payment of overtime for such transfer.

An employe . . . when compelled to transfer from one shift to another, will be paid overtime rates only for the first shift worked under the new assignment."

Under the holdings of this Division the change of shifts resulted from steps taken by management and ordinarily would fall within the following general language of Rule 8:

"When compelled to transfer from one shift to another."

See Awards 466, 467 and 1388 of this Division.

However, Rule 8 expressly exempts the payment of overtime when the transfer from one shift to another is made by an employe "in the exercise of seniority rights." This specific exemption is in no way qualified as to the act being voluntary or involuntary. In view thereof we find it expressly covers the situation of the claimants. Therefore we find this claim to be without merit.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June, 1952.