

Award No. 2203

Docket No. 2027

2-PT-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES'
DEPARTMENT A. F. of L.—Carmen**

PORT TERMINAL RAILROAD ASSOCIATION

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman C. R. Nance was improperly compensated at the straight time rate for service performed on January 20, 25 and 28, 1955.

2. That accordingly the Carrier be ordered to compensate the aforesaid Carman additionally in the amount of four (4) hours' pay at the straight time rate for each of the above dates.

EMPLOYEES' STATEMENT OF FACTS: Carman C. R. Nance, hereinafter referred to as the claimant, regularly assigned on the repair track, Houston, Texas, 7:00 A. M. to 12:00 Noon and 12:30 P. M. to 3:30 P. M., Monday through Friday, with rest days of Saturday and Sunday, was instructed on Thursday, January 20, 1955, to report on the 3:00 P. M. to 11:00 P. M., shift to fill in for Car Inspector J. H. Fontenot while he was off on his earned vacation. The claimant remained on Fontenot's assignment until January 25, and was instructed on Tuesday, January 25, 1955, by the foreman to report for work on the 11:00 P. M. to 7:00 A. M., shift to fill in for Car Inspector W. M. Coslett while he was off on his annual earned vacation. The claimant returned to his regular assigned position on the 7:00 A. M., to 12:00 Noon and 12:30 P. M., to 3:30 P. M., shift on Friday, January 28, 1955.

The carrier has declined to adjust this dispute on a basis satisfactory to the employees.

The agreement effective March 1, 1952, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that under the clear and unambiguous provisions of Rule 8, which reads as follows:

"(a) Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred.

ployes, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

This article provided for the authorized representatives of the employes, who are parties to this agreement, and the proper officer of the carrier to make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement when they had in mind conditions which existed or might arise on individual carriers when making provisions for vacation with pay. It is obvious that it was not contemplated by the representatives of the employes or the carrier that there would be any controversy in connection with the application of this Chicago Vacation Agreement; furthermore, the representatives of the employes must have concurred with the manner in which the vacation relief worker was assigned or there would have been protest some time during the thirteen year period prior to January 1955 when the subject claims were filed.

Rule 8 of the agreement between the Port Terminal Railroad Association and the employes represented by System Federation No. 14 Railway Employes' Department A. F. of L. Mechanical Section Thereof reads as follows:

"Changing Shifts

Rule 8

(a) Employes changed from one shift to another will be paid overtime rates for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred. This rule will not apply when changes are made either in the exercise of seniority, or at the employe's request.

(b) Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular jobs. Such assignments will be excepted from the requirements for penalty payments upon change of shift for shift changes included in the regular relief assignments."

It is the opinion of this carrier that Section (b) of the aforementioned rule is certainly a controlling factor in connection with this claim and definitely precludes the provisions of Section (a) of the same rule which provides for overtime rates for the first shift of each change when an employe is changed from one shift to another. Inasmuch as the assignment which Carman Nance was covering was in all its sense a regular relief assignment, he was properly compensated when paid the straight time rate. This Section (b) of Rule 8 did not exist in the agreement between the Port Terminal Railroad Association and the employes represented by System Federation No. 14 Railway Employes' Department A. F. of L. Mechanical Section Thereof, prior to the time that the current agreement was made effective March 1, 1952. When the current agreement was made effective and Section (b) of Rule 8 was made a part thereof, the Chicago Vacation Agreement was also made a part of the same agreement under Rule 61. Therefore, this fact further substantiates the carrier's position that Carman Nance was properly compensated for services performed when he was allowed the straight time rate for January 20, January 25 and January 28, 1955.

The carrier respectfully requests that the claim be denied.

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.

This claim is made in behalf of Carman C. R. Nance for four (4) hours' additional compensation at the applicable straight time rate for services performed on January 20, 25 and 28, 1955 on the basis of Rule 8 of the parties' agreement effective March 1, 1952. Claimant was paid for the services he rendered on each of these days for eight (8) hours at the applicable straight time rate. Rule 8(a), if controlling, provides: "Employees changed from one shift to another will be paid overtime rates for the first shift of each change."

On Thursday, January 20, 1955, claimant filled the shift of the job occupied by Car Inspector J. H. Fontenot while Fontenot was temporarily off on a vacation. Claimant remained on Fontenot's position until Tuesday, January 25, 1955, when he returned to the shift of a carman on the position that he held. On Friday, January 28, 1955, claimant filled the shift of the job occupied by Car Inspector W. M. Coslett while Coslett was temporarily off on vacation.

Claimant was, as of January 7, 1955, assigned to the position of "Vacation Relief and Rip Track" after the position had been bulletined, as required by Rule 11, and no bids received. See carrier's Bulletins Nos. 510 and 512.

Article 6 of the vacation agreement provides that: "The carrier will provide vacation relief workers * * *." This language authorized carrier to establish the position it did.

Rule 8(b) of the parties' agreement, effective March 1, 1952, provides: "Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular jobs. Such assignments will be excepted from the requirements for penalty payments upon change of shift for shift changes included in the regular relief assignments."

The organization contends this provision was negotiated into the agreement because of certain provisions of the 40 Hour Week Agreement. It may be that the cause for negotiating Rule 8(b) into the agreement was as the organization contends, but the language used is not so limited. It is general in character and broad enough to include any kind of relief assignment authorized, including any established under and pursuant to the provisions of the vacation agreement.

In view of the foregoing we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1956.