

Award No. 4188
Docket No. 4163
2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Allouez Carman Thomas Gage was denied proper payment when the Carrier abolished his shift and he reverted to another shift.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Thomas Gage in the amount of four hours pay for said change of shift at direction of management.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier employs carmen at their point of Allouez, Wisconsin where Carman Thomas Gage, hereinafter referred to as the claimant, worked as car inspector on the third shift.

During the summer months a three shift operation is in force in the inspection yards and a one shift operation is employed on the repair track.

Towards the end of the ore shipping season the three shift operation is reduced to either a two or one shift operation. In the instant case it was reduced from a three shift operation to a two-shift operation.

On October 28, 1960 a bulletin was posted reducing the three shift operation to a two shift operation.

One of the car inspectors elected to exercise his seniority and revert to the second shift.

As there were no junior men to him on the second shift the claimant was forced to accept a position as a carman on the repair track on the first shift.

Awards 237, 1299 and 1816, which are cited in support of this claim, involve rules on the Illinois Central, Texas and Pacific, and Toledo Terminal railroads which differ materially from 18(a)."

This Board has often held that prior interpretations of an agreement which are contained in sound and logical awards of this Board should be followed. In this connection consider Award No. 3216, F. & O. v. G. N., Referee D. Emmett Ferguson, which stated the rule as follows:

"It is our duty to examine previous awards and where possible to harmonize the instant case with the best thought of preceding cases. We should not lightly disregard previous awards because that would neglect the purpose of our being."

The organization has presented no evidence or sound arguments to establish that the previous awards of this Board on the issue involved in this case, should not be followed.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. Rule 18(a) applies only to temporary transfers at the direction of management where the employe retains a right to return to his regular assignment, and not to permanent transfers made as a result of the exercise of seniority.
2. The claimant in this case made a permanent transfer as a result of the exercise of his seniority.
3. Awards 2067, 2103 and 3846 of this Board which involve parties, rules and facts identical to those in the instant case, denied the organization's contentions concerning Rule 18(a).
4. This Board has held that sound and logical awards such as those cited above, should be followed.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant held a regular assignment as a car inspector on the third shift at the Allouez, Wisconsin train yard. All positions on this third shift were abolished on October 31, 1960.

Claimant reverted to the position of carman on the first shift at Allouez by reason of the exercise of seniority, which claimant refers to as a compulsory exercise of seniority, and maintains that his change of shift was at the direction of management and that he should be paid at the overtime rate prescribed by Rule 18(a) for the first shift worked on his new shift.

Rule 18(a) reads as follows:

“Employes transferred from one shift to another at the direction of management will be paid overtime rate for the first shift worked on the shift to which transferred and if he works more than one shift on the shift to which transferred will be paid at overtime rate for the first shift worked after returning to his regular assignment. Such overtime payment shall not apply to transfers made as a result of the exercise of seniority.”

The Carrier's position is that this was not a transfer at the direction of management and further that no overtime pay is due because the transfer was the result of the exercise of seniority.

Numerous awards of the Division have been cited concerning similar rules on other properties. Three awards concerning the subject property have been cited, all three of which sustain the carrier's position herein as to the interpretation of Rule 18(a), with the further restriction that the transfer must be temporary with the employe retaining a right to return to his regular assignment. It appears that this latter restriction was separated out and defined by the Division in Award No. 1400.

The question to be determined is this:

“When claimant's position has been abolished, and his alternatives are to either exercise seniority or lose employment, and he chooses the first alternative, does this constitute such a transfer from one shift to another 'at the direction of management' as is contemplated by Rule 18(a)?”

An examination of the authorities, and the evidence and the arguments of the parties herein requires the answer to be in the negative and accordingly the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.