



**Award No. 5174**  
**Docket No. 4939**  
**2-B&O-CM-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

(1) The current Agreement, Rule 10, was violated when the following twenty-five (25) named claimants were improperly compensated for changing shifts.

**Carmen**

Paul A. Kovalchick  
 Paul F. Betton  
 Lorraine F. Duttry  
 Joseph A. Getch  
 Dale Smith  
 Clifford D. McAninch  
 Francis E. Hand  
 John T. Hoover  
 Ralph Gamble  
 Edward J. Platt  
 Thomas L. Minns

**Carmen-Helpers**

Joe Martino	John W. Clark
Russell W. Hand	John G. Shannon
Bruno Lepionka	Ray L. Swanson
Stanley Marusiak	Walter Krul
Walter R. Shenkle	Kenneth Flanders
Henry Hollman	Ralph Laborde
George H. Hrin	Blake E. Joiner

(2) Accordingly, the carrier should compensate the claimants in the amount of eight hours each at the overtime rate.

**EMPLOYEES' STATEMENT OF FACTS:** On August 3, 1964, a notice was posted by Superintendent of Shops W. A. Barrick at the DuBois Car Shop, DuBois, Pennsylvania, notifying all concerned that:

"Effective with the scheduled close of tour of duty, Friday, August 7th, 1964 All Carman Cutting Torch Operators, Carman Welder Operators, Carman (sic) and Carman Helper Positions on the SECOND TRICK in the Underframe Shop Erecting Shop, and Roundhouse ARE ABOLISHED.

All employes affected by this abolishment will report to work Monday August (sic) 10th at 7:00 A.M. and arrange to exercise seniority."

In the instant case, if what occurred be construed as a "reduction in force," then plainly the claimants are not entitled to overtime for the first shift of the change because they did not lose a day's pay.

On the other hand, if what occurred be construed as a restoration of forces, then similarly the claimants are not entitled to overtime for the first shift of the change because, as the parties have agreed since 1948, "When force is increased after it has been reduced, employes are not obliged to change shift but do so only if they desire to do so. Therefore any change of shift that occurs in connection with the restoration of forces is a change at the request of the employe involved and Rule 10 does not apply in such circumstances."

Plainly, by following the language of Rule 10(a) and, just as importantly, the interpretations the parties themselves have placed on the rule over the years, the claimants in the instant case did not qualify for the overtime payment.

These claims are not valid and ought to be denied. Therefore, the Carrier respectfully requests that this Board so rule and deny these claims in their entirety.

Oral hearing is requested.

(Exhibits not reproduced.)

**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.

In this claim for additional compensation, it is alleged that the twenty-five named Carmen-Claimants were improperly compensated under the following circumstances. Pursuant to notice duly posted August 3, 1964, the jobs of Claimants were abolished at close of tour of duty August 7, 1964, and said notice further specified that the employes affected "will report to work Monday, August 10th, at 7:00 A. M. and arrange to exercise seniority." Thereafter, on said date, August 10th, each Claimant received a position and again began work.

Thus the record here discloses a state of facts not materially different from those that were examined and considered in Second Division Awards 4277 and 4549. And here also we find that the regularly assigned jobs of Claimants were abolished and that thereafter the Claimants, exercising their seniority, chose work on other shifts.

After a lengthy study of the large number of authorities cited for our consideration by both parties here involved, we feel it incumbent upon us to follow the holding in Award 4549 where it was said:

"\* \* \* Suffice to say that divergent views are expressed in the Awards upon which the parties rely. We believe that, as applied to the facts before us, not only will the intent of the parties who are signatory to the applicable agreement be best expressed but also continuity will be maintained if we follow the Awards which have held that when jobs, or shift, are abolished due to economic reasons, whereby an employe can accept furloughed status or exercise seniority to acquire a new position on another shift such is not a change in shift as contemplated by the provision of Rule 13 and the time and one-half rate is not applicable." (Rule 13, mentioned in Award 4549, in pertinent part uses the same language as Rule 10(a) in the instant case, to wit: \* \* \* 'employes changed from one shift to another \* \* \*'.")

Accordingly, it is our conclusion that this claim may not be sustained.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.