

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current Agreement, particularly Rules 3 and 10, on January 3, 1983, when it changed Electrician D. Pierce's shift and failed to compensate him at the penalty rate in accordance with Rule 10 of the current Agreement.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Electrician D. Pierce for four (4) hours' wages at the current rate of pay.

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 employes 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 waived right of appearance at hearing thereon.

The instant dispute involves Rule 10 of the current Agreement, which states in pertinent part:

"Employes required to change from one shift to another will be paid overtime rates for the first shift of each change, except when sixteen (16) hours has elapsed from the closing time of their regular shift..."

The Claimant D. Pierce states that on January 2, 1983, he reported for work on the second shift, his regularly scheduled shift, in the Diesel Department. He states that while working on that shift his Foreman R. Foley told him to report for work at the Locomotive Department beginning with the first shift on the following day, January 3, 1983. Because Claimant's original shift ended at 11:00 P.M. and his new shift was to begin at 7:00 A.M. the following day, there was no 16-hour period between the two shifts. Therefore, if he worked the first shift on January 3rd, he would be entitled to the overtime pay required by Rule 10.

The parties agree, however, that the Claimant did not actually work the first shift on January 3rd. He states that he reported for work on the first shift but was advised to return to work later that day during his regular shift. The Organization argues, nevertheless, that the Carrier should pay the penalty required by Rule 10 because it changed Claimant's shift when it instructed him on January 2nd to report for duty on the first shift on the following day, and because it occupied his time during the first shift on January 3rd.

The Carrier disputes the claim on the grounds that the Claimant's Foreman could not have ordered Claimant on January 2nd to change his shift, because the Foreman did not work that day. The Carrier also presented records showing that the Claimant worked the entire month of January, 1983, including January 3rd, at his original location on his original shift.

In the Board's opinion the Organization has failed to meet its burden of proving that the Agreement has been violated. Even if the Board were to give equal weight to both the Claimant's and the Foreman's statements, the fact remains that the Claimant did not work the first shift on January 3rd. No shift change was completed. As the Organization suggests, it may be that the Agreement prohibits a Carrier from ordering an employee to change his shift, and then rescinding that order after the employee has arrived at work, simply to circumvent the penalty prescribed by Rule 10. However, the Board need not decide that issue today because the Organization has not proved that such an order was ever given in this case. The Claimant's statement that he was ordered to change shifts is not sufficient by itself when placed against the records and statement provided by the Carrier.

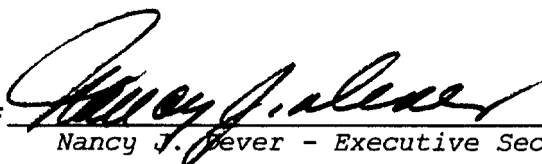
The party filing a claim has the burden to prove that the Agreement has been violated. Consequently, because the Organization has failed to carry its burden of proof, the Board accordingly finds that the instant claims are without merit.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1985.