

Award No. 237

Docket No. 238

2-IC-FO-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Rule No. 9 was violated and that A. T. Munier, J. W. Poyner and L. R. Jacobs be paid time and one-half rate of pay for changing shifts at Paducah shops, Paducah, Kentucky.

JOINT STATEMENT OF FACTS: On July 31, 1937, a force reduction was effected by the abolishment of a position of lead laborer. The incumbent, Lubie Hughes, exercised his seniority displacing Gay Miller, who in turn exercised his seniority displacing L. R. Jacobs, who in turn exercised his seniority displacing Irvin Smalley, who displaced A. T. Munier, who in turn displaced J. W. Poyner, who displaced a laborer on the first shift.

The above outlined displacements were made in accordance with the agreed upon understanding of Rule 19, second and third paragraphs, which read:

"Employees advanced from one group to another will rank in the group to which advanced, from the date of transfer, but will retain their seniority and may exercise displacement rights (when force is reduced or positions abolished) in group from which advanced.

"Employees affected by this rule shall file their application for positions within five (5) days or forfeit this right."

The "Class C" seniority rank of the employees is:

Rank	Name	Date	Rank	Name	Date
1	Lubie Hughes	October 6, 1931	10	Irvin Smalley	July 25, 1934
6	Gay Miller	August 10, 1933	22	A. T. Munier	August 18, 1936
8	L. R. Jacobs	June 15, 1934	26	J. W. Poyner	October 22, 1936

Assignments of the employees were:

	Prior to the Reduction in Force	Subsequent to the Reduction in Force
Lubie Hughes	7:00 A.M. to 4:00 P.M.	7:00 A.M. to 4:00 P.M.
Gay Miller	7:00 A.M. to 4:00 P.M.	4:00 P.M. to 12:20 A.M.
L. R. Jacobs	4:00 P.M. to 12:20 A.M.	7:00 A.M. to 4:00 P.M.
Irvin Smalley	7:00 A.M. to 4:00 P.M.	7:00 A.M. to 4:00 P.M.
A. T. Munier	7:00 A.M. to 4:00 P.M.	4:00 P.M. to 12:20 A.M.
J. W. Poyner	4:00 P.M. to 12:20 A.M.	7:00 A.M. to 4:00 P.M.

tutes a request to change shifts. The carrier couples the words after the semicolon, namely: "This will not apply when shifts are exchanged at the request of the employes involved" with the first sentence and also maintains that the word "changed" in the first sentence means that the carrier must have ordered the change.

The meaning of the words used in the rule must, under the circumstances, be determined by the context and the purpose of the rule. The grant of overtime under the rule is evidently for the purpose of protecting workers from loss when their shifts are changed by an act of the carrier. The employes in this dispute were changed to other shifts by an act of the carrier and did not voluntarily seek a change. The abolishment of a position, the act of the carrier, set in motion displacements down the seniority line. Everybody knew who would be displaced. The change was almost as definite and direct as though the men had been shifted by specific order. If any of these three employes had an opportunity to choose a place on the same shift and chose rather to take a different shift the changing of shifts would be a voluntary act and he would not be entitled to overtime. The record does not disclose whether any one of the three employes involved in this dispute could have taken a place on the same shift. If any of the three chose voluntarily a different shift he is not entitled to overtime.

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.

AWARD

In accordance with the above Opinion of the Division the claim of the employes is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of May, 1938.