

Award No. 466

Docket No. 462

2-NYC-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Rule 13 was violated when J. Holligan was forced to change shifts through displacement on account of reduction in force, and that he should receive time and one-half for changing shifts.

JOINT STATEMENT OF FACTS: The position held by J. Dick at Croton West Yard was abolished January 9, 1939, hours 7:00 A. M. to 3:00 P. M. J. Dick exercised his seniority rights voluntarily to displace J. Grundler on second shift, hours 3:00 P. M. to 11:00 P. M. J. Grundler displaced D. O'Leary on the same shift; D. O'Leary displaced J. Holligan on the same shift. There being no junior man on this shift, J. Holligan displaced A. Carlic on the third shift, hours 11:00 P. M. to 7:00 A. M.

Rule 13 reads:

"Employee changed from one shift to another will be paid over-time rates for the first shift of each change. Employees working two or more shifts on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

POSITION OF EMPLOYES: We contend that J. Holligan was forced to change shifts due to the exercise of seniority by another employee who was displaced by the abolishment of a job. There being no job on his shift which he could take, therefore, under the provisions of Rule 13 of the shop crafts' agreement, he should be paid time and one-half for changing shifts as he was forced to change shifts in order to be able to hold any job.

The committee desires to call the attention of the Honorable Board to Award No. 237, Docket No. 238 by the National Railroad Adjustment Board, Second Division, which, in our opinion, was exactly the same kind of a case as that of J. Holligan's claim for premium time for changing shifts, and the rule in the case of Award No. 237 is the same as Rule 13 of the New York Central Agreement with System Federation No. 103.

POSITION OF CARRIER: The employees are basing their claim on the provisions of Rule 13. This rule was agreed to in negotiations in 1921, and while the principle of Award No. 237 may have been applied locally in some cases, it has not been applied in all cases.

The management offered to dispose of this and another case which is being submitted to your Board by conceding the application of the principles of Award No. 237 of your Board, in displacement cases brought about by force reductions, if the committee would accept, as a basis for disposing of one of the features involved in the other case, the principles of Award No. 263 of your Board in cases involving bidding for new positions or vacancies and returning employees, when forces are restored, to positions they held prior to force reductions.

The management believes your Board will recognize that its offer for completely disposing of questions regarding the application of this rule was fair and will so decide.

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.

These findings and opinions apply to Docket No. 462, Award No. 466, and Docket No. 463, Award No. 467.

Both cases involve an interpretation of Rule 13 of the agreement covering changing from one shift to another. The question has been before this Division before and we are cited by the employes to our Awards Nos. 56 and 237, sustaining the contention here made.

The cases arise as a consequence of displacements from one shift to another, resulting from force reductions, except that in Docket No. 463, in the case of a claim of O. Koslik for one of the days involved, the shift resulted from a restoration of forces causing him to return to the one formerly occupied by him before the force reduction.

All of the shifts were a consequence of steps taken by the management and consequently do not come within the purview of the last sentence of Rule 13, excepting its application, "when shifts are exchanged at the request of the employes involved." In none of these cases could there be said to have been any "exchanges" in shifts. There were changes, but no exchanges.

Rule 13 is applicable and each of the claims will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1940.