

Award No. 791

Docket No. 725

2-GN-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That on December 20, 1940, at Minneapolis, Minnesota, the carrier did and is by arbitrarily transferring Car Inspector Ben Schulte from the train yard to the repair track, violating Rule 12 (b), Rule 32, Carmen's Special Rule 2, and schedule on page 2 of agreement, reading in part as follows:

"This schedule shall remain in effect until thirty days after notice of a desire to amend it shall have been given by either party thereto to the other. . . ."

(b) That Inspector Ben Schulte be restored to the train yard position which he occupied on December 20, 1940, or immediately prior thereto and compensated for each Saturday and Sunday he has not worked since December 20, 1940, by reason of the aforesaid violations of the carrier.

JOINT STATEMENT OF FACTS: On December 20, 1940, Ben Schulte, employed as car inspector at Minneapolis, was removed from that position and transferred to one of car repairer on the repair track at the same point account his failure to pass visual examination satisfactory to the management.

POSITION OF EMPLOYEES: This case has been handled in accordance with the requirements of Rule 27 of the agreement between System Federation No. 101 and the Great Northern Railway Company, and we contend that Mr. Ben Schulte, should be reinstated to service and compensated for all wage losses incurred as the result of his being unjustly deprived of employment, as inspector in violation of Rule 12, (b), which reads in part as follows:

"Employees disqualified will be advised of reason for such disqualification, and no employee will be disqualified after they have been thirty days on the job."

It is further contended that this practice is in violation of Rule 32, which reads:

Applicants for employment must fill out necessary application form and employment shall be considered temporary until application has been approved by Medical and Employment Departments.

To put the matter in its purely essential form, Schulte's claim is not one as to rate of pay, but purely one to cover performance of overtime work. He is receiving the same rate of pay as a carman as he would if employed as an inspector. However, as an inspector, he would work Sundays and holidays, at overtime rate, whereas, as a carman, he normally would not so work. Overtime work, of course, is not subject to any guarantee; it is work performed over and above the minimum contracted for. The carrier's position is purely that he is visually not a safe man for inspector's work in a train yard, working around and among moving cars and trains, where his sole protection is through the use of colored lights or flags, and as such, must be withheld from such hazard, even if he is thereby not regularly employed seven days per week. The carrier wishes to make its position therein very plain, as it does not wish to be subject to any criticism through knowingly assigning a man to service which involves an unnecessary hazard; and if the assumption of such hazard by an employe, contrary to all known facts of his unfortunate disability, is to be recognized as proper, it is to be upon the responsibility of this Board, and not upon that of the carrier.

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.

If the carrier had a right to the examination same was waived by employing Schulte in the years 1939 and 1940 and for 43 consecutive days prior to the date of his transfer. The record does not clearly show whether this is a seven day assignment and it will be necessary to refer the matter back to the parties to ascertain whether or not Schulte has been deprived of any overtime which he was entitled to under the provisions of the rules.

AWARD

Claim referred back to the parties in accordance with the findings to ascertain whether Schulte is entitled to any overtime. Schulte to be reinstated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1942.