

Award No. 1024

Docket No. 971

2-FtDD&S-EW-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 144, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**FT. DODGE, DES MOINES & SOUTHERN RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

- (A) That on date of September 15, 1943, the carrier did violate Rule 3 of current wage agreement by compensating Gerald Johnson at pro rata rate for service rendered as a substation operator, third shift, from 11:00 P. M., September 15, 1943, to 7:00 A. M., September 16, 1943.
- (B) That Gerald Johnson, electrician helper, be compensated under Rule 3 at overtime rate for service rendered as substation operator from 11:00 P. M. to 7:00 A. M. on above dates.

JOINT STATEMENT OF FACTS: Gerald R. Johnson is employed by the Fort Dodge, Des Moines and Southern Railway Company as an electrician's helper with headquarters at Boone, Iowa, and regular assigned hours from 8:00 A. M. to 5:00 P. M. with one hour out for meal period daily except Sundays and holidays. On September 14, 1943, this man worked his regular assignment and went off duty at 5:00 P. M. He was then instructed to report for duty as third trick substation operator at East Fort Dodge, Iowa, at 11:00 P. M., September 15, 1943, which he did and worked this substation relief operator assignment on September 15-16-17-18-19 and 20, 1943, being relieved from this assignment at 7:00 A. M., September 21, and was paid substation operator's pro-rata rate of pay for eight hours per day for the six days he performed this relief substation operator service.

POSITION OF EMPLOYEES: It is our position that under provisions of Rule 3 (last paragraph) of current wage agreement:

Rule 3 (last paragraph):

"Employees ordered changed from one shift to another will be paid overtime rates for the first shift of each change."

Gerald Johnson's regular assignment is from 8:00 A. M. to 5:00 P. M. (exclusive of meal hour); he was ordered to change from this shift to the 11:00 P. M. to 7:00 A. M. shift. We claim this is clearly a change of shift under Rule 3 and should be paid at the overtime rate.

Rule 28, to which the carrier refers in Exhibit B, is only the vehicle by which electrician helpers are made available as substation operators and makes no mention of hours or rates of pay. Further, in Exhibits B the carrier

cites Rule 13: "While filling such vacancy the employee's straight time and overtime hours shall be the same as those of the employees regularly assigned to the position." It is our contention that this rule does not become effective until after the change of shift is completed and the provisions of Rule 3 have been fulfilled by the payment of the overtime rate for the first shift of the change. Carrier further contends that Rule 3 applies only to employees changing shifts at their regular assigned station and in their regular assigned class. It is our position that Rule 3 does not support this contention. Its scope is stated, "Employees ordered changed from one shift to another." It makes no distinction between stations or class of work.

Violation of the provisions of Rule 3 is quite obvious, and therefore, your Honorable Board should properly sustain claim of employees.

POSITION OF CARRIER: Rule 1 of the agreement between this company and the International Brotherhood of Electrical Workers, Local No. 372, dated August 25, 1937, and now in force, a copy of which is submitted marked "Exhibit F" divides the employees covered by said agreement into five different classes.

Gerald Johnson is an electrician's helper in the maintenance class, within classification "B" of said Rule No. 1.

Rule 28 of said agreement provides in part that "Whenever possible, relief substation operating shall be done by helpers in the electrical maintenance class. If no helper in this class is available, then the bonding foreman will be used." Said agreement makes no other provision for relief substation operator service.

The company contends that when it notified Gerald Johnson to report for relief sub-station work, he was changed from one class of service to another, as required by said Rule No. 28, and was not required to change shifts in his class of service, and while filling such temporary vacancy was paid in accordance with the last paragraph of Rule 13, which provides that while filling such vacancy the employee's straight time and overtime hours shall be the same as those of the employee regularly assigned to the position. The company further contends that the last paragraph of Rule 3 is not applicable to this case, as the employee was not changing shifts in his class of service, but was used in another class of service, as required by the agreement.

That at the time this agreement was made and up to the present time, the only class of service covered by said agreement, in which more than one shift is regularly assigned to work, are the substation operators and that when said agreement was negotiated it was understood that the last paragraph of Rule 3 was intended to apply to substation operators, that being the only class of service in which more than one shift was regularly worked.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Gerald Johnson is employed as an electrician helper with headquarters at Boone, Iowa.

His regularly bulletined hours are from 8:00 A. M. to 5:00 P. M. except Sundays and holidays.

On September 15, 1943, he was assigned to work the 11:00 P.M. to 7:00 A.M. shift at East Fort Dodge Substation.

Rule 28 does not nullify the provisions of Rule 3 reading:

“Employees ordered changed from one shift to another will be paid overtime rates for the first shift of each change.”

The ordering of Johnson to another shift constituted “change of shift” within the meaning of Rule 3.

AWARD

Claim of employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of August, 1944.