Award No. 1229
Docket No. 1140
2-ACL-MA-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (MACHINISTS)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the following employes, namely:

Machinists	Machinist Helpers
C. H. Hosmer	C. M. Waters
John Lovell	W. A. Williams
Buell Smith	Harry Sports
Yatice Nunalee	W. L. Mincey
F. H. Lewis	Ottis Wooten
Elam Cowart	W. B. Johns
M. L. Sports	
J. W. Fulford	
T. L. Fulford	

were each improperly compensated when they were refused overtime rates for having been changed from one shift to another on October 24 and on November 1, 1946, under the current collective bargaining agreement.

2—That accordingly the carrier be ordered to additionally compensate each of these said employes (hereinafter referred to as the claimants) for the service which they performed of 8 hours on each of the aforesaid dates in the amount of time and one-half therefor, or a total of 8 hours at their respective pro rata rates of pay.

EMPLOYES' STATEMENT OF FACTS: Thirty-eight (38) machinists, twenty-three (23) machinist helpers, and twenty-two (22) machinist apprentices were furloughed effective October 24-31, 1946, inclusive, in effectuation of a suspension of work in the carrier's locomotive backshop at Waycross, Georgia, during that period.

All of the several claimants were among those employes regularly employed on first shift (backshop) assignments, 7:00 A. M. to 3:30 P. M., as of October 18, 1946, when the five (5) days' advance notice was given all mechanical employes of the reduction in force to become effective October 24, 1946.

Neither of the claimants was named on the furlough list, addressed "To All Employes Mechanical Department", disclosing the names of employes to be cut-off or furloughed pursuant to the five (5) days' notice served under Rule 16—Reduction of Expenses.

Every one of the men had worked more than two shifts since they exercised their seniority on October 24. Therefore, there is no reason why they should be entitled to overtime rates on November 1 when they decided to give up the jobs of their own accord that they had taken on October 24 and come back again on the first shift in the locomotive shop. This was done purely on their own initiative. Had they chosen they could have stayed on the jobs that they took in the different departments on October 24, 1946.

This case is not at all similar to Award 1161, Docket 1079, as in that Award the entire shift was abolished and mechanics had no other option but to exercise seniority on some other shift.

The carrier contends that inasmuch as nine of the machinists and six of the machinist helpers had jobs on the first shift over which they could exercise their seniority on October 24, that there was no good reason why they should have chosen to go on the second and third shifts and claim overtime rates for making this change. The change of shifts was entirely voluntary. The carrier surely did not force them to make this change. Therefore, there is no merit to this claim for overtime rates for the first eight hours the men worked on October 24.

Likewise, the claims for overtime rates for changing back from the second and third shifts to the first shift is entirely out of line, as these men had chosen to transfer to other shifts and had worked more than forty-eight hours on these shifts; therefore, were considered regular employes on those shifts. The carrier did not ask or force them to transfer back again to the first shift in the locomotive shop. The employes they displaced on October 24 could just as well have taken these jobs on the first shift. There is no merit to any of these claims. They are entirely out of line with the provisions of the current agreement and the carrier respectfully requests the National Railroad Adjustment Board to deny this claim.

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 respectfully 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.

The carrier here states that because of decreased earnings they made reductions in expenses by reducing forces.

The carrier's bulletin No. 542, dated October 18, 1946, giving five days' notice of the reduction to be made, was proper—as provided for in Rule 16 (g).

Posting bulletin No. 543, dated October 18, 1946, insofar as naming the junior men to be furloughed is concerned, was a proper procedure. The language of the paragraph preceding the list of names was improper and not in harmony with the provisions of the agreement. The language of the paragraph referred to above is the basis laid down by the carrier of their subsequent acts and which caused the controversy presented in this case. In other words, this action forced the senior men to "bump" or displace younger men and if this caused a transfer to another shift, then claim that a man exercised his seniority and thus relieved the carrier of the payment of overtime.

Rule 16 covers reduction in expenses—it refers to Rule 12 for its proper application. Paragraph (b) of Rule 12 covers situations where "changes in forces occur," which is what happened in this case. Paragraph (e) of Rule 12 states how paragraph (b) is to be applied. Paragraph (g) of Rule 12 prohibits "rolling" or "bumping." The carrier has ignored the above mentioned parts of Rules 16 and 12.

In this case the application of the agreement should have been as follows: Post a bulletin five days in advance of reduction. (Bulletin No. 542 did this.) Post a bulletin or give list to committee of men to be furloughed. (Bulletin No. 543 did this if the paragraph at the top had been left off.) From the list in bulletin No. 543 the carrier knew five days in advance of the furlough what jobs were vacated that they desired to be worked. They then should have considered paragraphs (b) and (e) of Rule 12, and posted bulletins for those vacant jobs. Then those that bid on those bulletins that caused a change in shift would not get the overtime rates provided for in Rule 9. If the carrier otherwise rearranges the forces for their own benefit and convenience they are responsible and must pay the overtime rates if a transfer is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1948.