

Award No. 1231  
Docket No. 1154  
2-K&IT-CM-'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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (CARMEN)**

**THE KENTUCKY & INDIANA TERMINAL RAILROAD  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That Carman Russel E. Wright was improperly compensated at straight time under the current agreement for having been transferred from one shift to another, and that accordingly the carrier be ordered to additionally compensate him at overtime rates from 3 P. M. to 11 P. M. on April 28, 1947.

**EMPLOYEES' STATEMENT OF FACTS:** Carman Russell E. Wright, hereinafter referred to as the claimant, prior to April 28, 1947, was assigned by the carrier to the inspection of freight cars in the train yard, commonly known as L. S. Junction, from 11 P. M. to 7 A. M.

There was a vacancy created on the second shift in the aforesaid train yard as the result of Cecil D. Gunther bidding in and being assigned from the second shift to the third shift, which is affirmed by the submitted copies of bulletins identified as Exhibits A, A-1 and A-2.

Effective April 28, 1947, the carrier transferred the claimant from the third shift to the second shift, and for having worked from 3 P. M. to 11 P. M. on April 28 he claimed overtime rates, and the carrier has declined to pay him only straight time for his services.

The agreement effective August 1, 1943, is controlling.

**POSITION OF EMPLOYEES:** The carrier did, by arbitrarily transferring the claimant from the third shift to the second shift in the train yard (L. S. Junction) without time and one-half compensation from 3 P. M. to 11 P. M. on April 28, violate Rule 11 of the controlling agreement, which reads:

"Employees transferring from one shift to another will be paid overtime rates for the first day or night of the new shift. This does not apply to employees who transfer at their own request.

Employees retained for three days or nights, or more, on a shift other than their regular shift will receive overtime rates when returned to their regular shift."

or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined, copy to be given to local Chairman. Bulletins must be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman.

An employe assigned to a position under this rule will lose the right to the position he left and, if after a fair trial he fails to qualify on the new position, he will have to take whatever position may be open in his craft."

and Carman C. D. Gunther being the senior applicant was awarded the vacancy effective as of April 28, 1947.

## 2. Claimant exercised his seniority rights.

During conference and in its correspondence organization held that Claimant Wright had made no request to be changed to the second shift and that the management "had arbitrarily assigned Wright to the second shift solely for the purpose of filling this vacancy for the benefit of the company and not to benefit Wright as he was perfectly willing to remain on the third shift."

We do not deny that claimant made no request to be changed from the third shift to the second shift. Carrier, however, let it be remembered, was obligated under the agreement to bulletin the 11 P. M.—7 A. M. position, and to award it to the senior competent employe. Claimant Wright bid on the 11 P. M.—7 A. M. vacancy but Carman Gunther had greater seniority and sufficient ability, and therefore was the successful bidder. There was only one job that Claimant Wright could hold, namely, the 3 P. M.—11 P. M. job held by Carman Gunther prior to April 27. There being only one job which Claimant Wright could hold, obviously, he was obligated to exercise his rights on that job or give up altogether his carmen's seniority rights. Claimant chose to take the 3 P. M.—11 P. M. job. Carrier being compelled by rules of the agreement to bulletin the 11 P. M.—7 A. M. position, any charge that carrier arbitrarily or for its benefit set off the chain of events which caused Claimant Wright to work from 11 P. M.—7 A. M. April 27 and from 3 P. M.—11 P. M. on April 28 is without foundation. The claim should, therefore, be denied.

**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.

The facts and circumstances surrounding this particular case are quite clear. The claimant was an upgraded helper and worked as a carman in the train yard at L. S. Junction with hours of assignment from 11 P. M. to 7 A. M. (the third shift) on and prior to April 21, 1947.

On April 21, 1947, he completed four years' practical experience at the carmen's trade as provided for under the terms of the Memorandum of Agreement, dated May 4, 1944, and therefore established seniority rights as carman on April 22, 1947. His name was then placed on the carmen's seniority roster as such, in accordance with the collective agreement, effective August 1, 1943.

It was disclosed at the hearing of this case that the local committee, immediately after Claimant Wright had completed his four years' practical experience at the carmen's trade and was placed on the carmen's seniority

roster, insisted that since Wright had been initially assigned to the job as an upgraded helper, the position should now be bulletined so that the senior carman desiring the job could bid it in.

Wright's position on the third shift was therefore bulletined and bid in by Carman Gunther, a senior employe. Carman Wright was then transferred to the position formerly occupied by Carman Gunther on the second shift, and in line with the current agreement, the position vacated by Gunther on the second shift, when he secured by bulletin the position that had been held by Wright on the third shift, was also bulletined. Carman McCausland was the senior bidder for the second shift job and was therefore awarded same. Finally, Claimant Wright took the place of a junior upgraded helper on the second shift.

It must be admitted that carrier would not have bulletined the position which Wright held on the third shift, after he had completed his four years' practical experience, had it not been for the pressure brought by the local committee. Having been thus displaced, the claimant was bound to exercise what rights he had or lose his rights as a carman.

The claimant did not by any means go to the position vacated by Gunther on the second shift for the convenience of the carrier.

Carman Wright did not make any protest, nor did he ask for any other job he could be assigned to.

It was argued by the employe representatives at the hearing before this Board, that the claimant did not ask to be transferred and that he preferred to remain on the third shift. However, as has already been stated, carrier was forced to bulletin the third shift position, which claimant occupied when he became a full-fledged carman. And the fact that claimant finally took a position on the second shift, displacing a junior upgraded man, clearly shows that he must have preferred the second shift since there were junior upgraded carmen on the third shift.

It goes without saying that the conditions were very unusual, the claimant had to leave the position he held on the third shift and he had a right to exercise his seniority if he had expressed any preference, which he did not. What is more to the point, the carrier would not have bulletined the position held by Wright on the third shift, when he became a full-fledged carman, if it had not been forced to do so by pressure of the local organization representatives. All things considered, therefore, it was the action of the organization representatives which started the bulletining of the two jobs mentioned above and resulted in the transfers which were made, and not by any action of the carrier.

In view of the unusual circumstances described in the foregoing, the claim in the instant case cannot be sustained.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 16th day of January, 1948.