

Award No. 1259

Docket No. 1171

2-SP (Tex&La)-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

DISPUTE—CLAIM OF EMPLOYEES: That Carman O. F. Rogers is entitled to be additionally compensated in the amount of four (4) hours for services performed from 3:30 P. M. to 11:30 P. M. on May 19, 1945, under the current agreement, and that accordingly the carrier be ordered to so compensate this employe.

EMPLOYEES STATEMENT OF FACTS: Car Inspector George Parma, whose regular assigned hours were from 3:30 P. M. to 11:30 P. M., 7 days per week, in the train yards at Ennis, Texas, was given a vacation of 12 days, from May 7 to 18, 1945, inclusive. Car Repairman O. F. Rogers, hereinafter referred to as the claimant, whose regularly assigned hours were from 8 A. M. to 5 P. M., with one hour off for lunch, was instructed to fill Car Inspector Parma's vacancy while he was on vacation. The claimant was not paid overtime rates when changed from the 8 A. M. shift to the 3:30 P. M. shift on May 7. Beginning with May 19, 1945, Car Inspector Parma, by permission of the local officials, absented himself from duty on his 3:30 P. M. to 11:30 P. M. assignment until July 16, 1945.

The claimant was instructed by his foreman to work in the place of Car Inspector Parma from 3:30 P. M. to 11:30 P. M. on May 19 until he returned to duty, which occurred on July 16, 1945.

The claimant turned in overtime rates in the amount of 4 hours pay for his services from 3:30 P. M. to 11:30 P. M. on May 19, 1945, and payment thereof has been declined to date.

The agreement, effective March 1, 1943, is controlling.

POSITION OF EMPLOYEES: It is submitted that Carman Parma absented himself from duty on the 3:30 P. M. to 11:30 P. M. shift, due to sickness or other causes, beginning with May 19 and ending July 16, 1945, and that the carrier elected to fill this vacancy of over thirty days without bulletining it as provided for in the fourth paragraph of Rule 15 of the collective agreement. It is thus obvious that when the carrier selected the claimant to fill this vacancy, he was deprived of the right to work his regular 8 A. M. shift

two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

The claim presented in this case is that of Carman O. F. Rogers, Ennis, for overtime rates for **change in shifts, May 19, 1945**. Mr. Rogers **did not change shifts on May 19, 1945**, nor for some days before or after May 19, 1945, and for that very reason, the claim fails of any possible basis or merit and should be denied. Rule 10 is the changing-shifts rule and provides that employees changed from one shift to another will be paid overtime rates for the first shift of each change. Obviously, there must be a **change of shifts** by an employee before the rule is applicable or before its provisions can be invoked or involved. The claim here is for a **change of shifts** penalty on **May 19, 1945**, on a day on which the claimant did not change shifts. As there was no change of shifts, there cannot reasonably be any proper claim nor any basis for a claim. Rule 10 also provides that employees working two shifts or more on a new shift shall be considered transferred. Carman Rogers worked a new shift on and after May 7, 1945. There is no question about the change of shifts, May 7, 1945, nor was there any claim for any such change of shifts, because such change is covered and expressly precluded by Article 12 of the National Vacation Agreement. By the very terms of Rule 10, Carman Rogers was considered transferred to the new shift on and after May 8, 1945, and on May 19, 1945, was on the shift for which he is now seeking a change of shifts penalty. He did not change shifts May 19, 1945, the date of the claim, and the claim as made is not supported or justified by Rule 10, nor any other rule or provision of the agreement.

Carman Rogers returned to his regular shift on July 16, 1945, and was paid the punitive overtime rate for the first shift of the change. The punitive payment provision of Rule 10 applies only when there is a change of shifts. There was no change of shifts in this case on May 19, 1945, and there was no change of shifts until July 16, 1945, when the punitive overtime rate was paid Carman Rogers for the first shift of the change because of the circumstances at that time. As there is no possible basis whatever for the claim as made, it should be denied.

CONCLUSION.

The rule involved applies when an employee is changed from one shift to another, with the further provision that an employee worked two shifts or more on a new shift shall be considered transferred. The carrier has shown no employee was changed from one shift to another on the day for which the claim is made, and that previous to that day the claimant was in status of having been considered transferred to the shift which he worked on the day of the claim; therefore, clearly there is nothing in the rule upon which the claim can be supported.

It is affirmatively stated that all documentary evidence referred to herein has been presented to the general chairman.

As the carrier has not seen or been furnished with a copy of the employee's ex parte submission, it is not in position to anticipate the contentions that will be made, and there will be no attempt made to answer such contentions at this time. Every effort has been made to set forth herein all relevant argumentative facts, including documentary evidence in exhibit form, but as it is not known what the organization will present, the carrier desires an opportunity to make such additional answer thereto as may be considered appropriate.

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 were given due notice of hearing thereon.

On May 18, 1945, when Carman George Parma's vacation, from May 7, 1945, to May 18, 1945, inclusive, terminated, carrier's right to shift claimant from his regular shift to that of Parma, without penalty because of the provisions of the vacation agreement, ended. Parma's continued absence thereafter was not a continuation of his vacation but a temporary vacancy under the parties current agreement to which claimant was assigned and to which Rule 10 applied. It resulted in a change of shift from claimant's regular assignment as of May 19, 1945. He was entitled to be paid for this shift on the basis of overtime. The claim should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1948.