

Award No. 1291

Docket No. 1207

2-Erie-BM-'49

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Boilermaker Roy Henry is entitled to be additionally compensated for having been changed from one shift to another at the overtime rates for his services from—

- (a) 3 P. M. to 11 P. M. on Saturday, August 3, 1946,
- (b) 7 A. M. to 3 P. M. on Monday, August 5, 1946,
- (c) 3 P. M. to 11 P. M. on Saturday, August 17, 1946,
- (d) 7 A. M. to 3 P. M. on Monday, August 19, 1946,

under the provisions of the collective agreement, particularly Rule 6 thereof.

EMPLOYEES' STATEMENT OF FACTS: Boilermaker Roy Henry, hereinafter referred to as the claimant, was regularly employed by the company in the roundhouse at Port Jervis, New York, with a seniority date of June 27, 1918, who ranks sixth on the seniority roster of twelve boilermakers.

The claimant's regularly assigned hours were from 7 A. M. to 3 P. M., and the carrier changed this claimant from the 7 A. M. shift to work the shift from 3 P. M. to 11 P. M. on Saturday, August 3rd; the 11 P. M. shift Sunday, August 4th, then back to the 7 A. M. shift Monday, August 5, 1946.

The carrier subsequently changed this claimant from the 7 A. M. shift to work the shift from 3 P. M. to 11 P. M. Saturday, August 17th; the 11 P. M. shift on Sunday, August 18th, and then back to the 7 A. M. shift Monday, August 19, 1946.

The claimant contended that he should be paid overtime rates for having been assigned or required to change from his own shift to the 3 P. M. shift, and again when he was changed back to his own shift as described herein, and the carrier declined to do so.

The Agreement effective as to rules August 1, 1942, is controlling.

POSITION OF EMPLOYEES: It is submitted that there is nothing contained in the aforesaid controlling agreement which authorized the carrier to arbitrarily nullify applying the overtime rates in Rule 6, reading:

"Employees changed from one shift to another by the Railroad will be paid overtime rates for the first shift of each change; this

1946. This claim is progressed entirely on the basis of Rule No. 6 of agreement August, 1942, between the Erie Railroad company and the employes of the mechanical department represented by Erie System Federation No. 100, which rule for ready reference reads:

"Employes changed from one shift to another by the Railroad will be paid overtime rates for the first shift of each change; this does not apply to employes changing shifts by exercising seniority for any positions or vacancies. Employes working two days or more on a new shift shall be considered transferred to that shift."

Claimant Henry was retained and was to work as a relief boilermaker for the purpose of relieving second and third trick boilermakers under the New York State Law and for vacation relief, and did not work only one assigned trick. The work which he performed on the dates in question, namely August 3, 5, 17 and 19, 1946, was work programmed for him and he was not required to change any assigned shifts by the railroad as contemplated by Rule 6. He would change shifts only as per program in the exercise of his assignment as a relief boilermaker.

We feel that this claim is without merit and should be declined for the following reasons:

1. When force reduction was accomplished at Port Jervis Roundhouse subsequent to May 11, 1946, the claimant Henry was only retained on the basis of a relief boilermaker.
2. His program called for relieving second trick and third trick boilermakers under the New York State Law and he was to work vacations in place of vacationers.
3. Rule No. 6 is not applicable in this situation because Boilermaker Henry was regularly programmed to cover the work of relieving boilermakers otherwise he would have been furloughed from the service and recalled only as necessary to work under Rule 20(d).
4. This arrangement enabled the general foreman to retain one additional man in his shop after May, 1946.
5. It would be decidedly unfair to now penalize the carrier because of the roundhouse foreman arranging to keep a boilermaker working, rather than using him only as an extra man when needed.
6. There is no rule in agreement of August, 1942 to prohibit the assignment without penalty of a relief boilermaker on various shifts.

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 waived right of appearance at hearing thereon.

Two questions are raised by the instant case:

- 1—Whether Rule 6 of the controlling agreement applies to a work assignment which may require the employe to work as a relief man on different shifts during the work week, and
- 2—Whether the man who is placed on such job, without bidding therefor, is exercising his seniority within the meaning of Rule 6.

The controlling agreement does not specifically prohibit the scheduling of a relief job. In the bulletin of May 17, 1946, the job posted was for the first trick, except when required to relieve on the second and third tricks. The work schedule contemplated by this announcement does not indicate how often a relief assignment will be requested. Under this arrangement, the relief work may not be required for several weeks running, or, on the other hand, the employee may be asked to work either the second or third tricks on one or more days of the work week. The significant change accomplished by the bulletin of September 30, 1946, was to definitely limit the extent of the relief assignment to work on the second shift one day of the week, and the third shift on another day. A work schedule less precisely charted would not successfully avoid the premium pay requirements of Rule 6. If the relief job schedule was so flexible as to permit shift changes to be made when necessary, Rule 6 would have no significance for the person called upon to fill that job. Regardless of the frequency of the shift changes, such a person never could claim the premium rate, because it could be argued that he was merely performing his bulletined assignment. Such a result would squarely conflict with the plain language of Rule 6.

Henry did not bid on the relief boilermaker's job bulletined on May 17, 1946, but was assigned to it by the general foreman. On this state of facts it cannot be said that he exercised his seniority to gain that job. The exercise of seniority implies the use of the seniority principle to gain a preference in some aspect of the employment relationship. In this particular case it was not Henry's superior seniority status, but his lack of seniority that caused him to be assigned to the relief job. The carrier's acknowledgment of Henry's seniority, in placing him on that job, is not the equivalent of Henry's exercising seniority to fill the job. The absence of a job bid by Henry is one of the features differentiating this case from Award 1234.

The only issue before this Board is whether Henry's work assignments on August 3, 5, 17, and 19, 1946, constituted a change of shift entitling him to overtime rates. It is immaterial whether identical assignments were performed by Henry during May, June, and July without claim for additional compensation. Inasmuch as the bulletin of May 17, 1946, merely referred to a relief job for work on the first trick, and also for relieving the second and third trick when required, without specifying the extent of such relief work, Henry continued to hold a regular assignment on the first trick. Accordingly, his shift was changed by the carrier's action on the dates involved in this case, and he should be compensated at premium rates.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1949.