

Award No. 1317

Docket No. 1245

2-C&EI-MA-'49

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist William E. Lindroth is entitled to be additionally compensated at overtime rates under the current agreement for having been changed from the 3:30 P. M. shift to the first shift, effective January 31, 1948, and that accordingly the carrier be ordered to so compensate this employe.

EMPLOYEES' STATEMENT OF FACTS: William E. Lindroth, hereinafter referred to as the claimant, was regularly employed by the carrier at Danville, Illinois, with assigned hours from 3:30 P. M. to 12:00 midnight, from December 5, 1947, through January 30, 1948.

The carrier instructed the claimant on January 30 to report for duty on the first shift Saturday, January 31, and this is affirmed by the submitted copy of letter to the claimant from Mr. R. R. Risser, shop superintendent, dated January 30, 1948, identified as Exhibit A.

The claimant turned in on his January 31 service card overtime rates for the first shift which he worked on his new shift assignment and the management from the top to the bottom has declined to allow it.

The agreement effective July 15, 1944, is controlling.

POSITION OF EMPLOYEES: It is submitted that since the carrier elected to notify the claimant on January 30, (Exhibit A) to discontinue working on the second shift and report for duty on the first shift, Saturday, Jan. 31, that the claimant was subject to be paid overtime rates under the provisions of the aforesaid controlling agreement, particularly that part of Rule 8 thereof, which reads:

"An employe transferred from one shift to another at the company's request, or when compelled to transfer from one shift to another, will be paid overtime rates only for the first shift under the new assignment."

It is obvious that under the provisions of this rule and Exhibit A, the claimant was transferred from one shift to another, or compelled to transfer from one shift to another, and that accordingly he is entitled to be additionally paid in the amount of four hours at the pro rata rate for the services which he performed on January 31, 1948.

Moreover, the claimant did not by any stretch of the imagination exercise his seniority from one shift to another on January 31, 1948, nor did this

Oaklawn Roundhouse

October	— 1945	—	9	Employees
April	— 1946	—	5	Employees
May	— 1946	—	48	Employees
August	— 1947	—	7	Employees
			<u>69</u>69

Oaklawn Freight Car Department

July	— 1945	—	35	Employees
April	— 1946	—	61	Employees
May	— 1946	—	101	Employees
January	— 1947	—	104	Employees
			<u>301</u> 301
				<u>961</u>

In subsequent restoration of forces those affected were compensated for transfer in return to regular assignment in accord with the recognized interpretation that such transfer in shift constituted exercise of seniority. In no instance did the employes complain or claim that they were entitled to the overtime rate for the first shift of such transfer, which confirms carrier's statement that transfer in shift under such circumstances has heretofore been recognized as exercise of seniority. There has been no change in conditions that would justify repudiation of this established interpretation of the rule here involved.

It is the carrier's position:

1. That the interpretation here demanded is contrary to that mutually accepted and recognized by the parties to the Agreement for a period of twenty-seven years.
2. That the language of the rule does not make mandatory that employes transferring from one shift to another shall be compensated at the overtime rate.
3. That the rule leaves it to the discretion of the parties to determine what shall and what shall not be construed as exercise of seniority.
4. That for twenty-seven years the parties to the agreement have recognized and accepted that an employe returning to his regular assignment under circumstances where he left same in the exercise of seniority, did likewise return in the exercise of seniority.
5. That this interpretation is still accepted and applied by the other organizations party to the agreement.
6. That the circumstances and language of the rules involved do not warrant an award reversing an accepted interpretation of twenty-seven years' standing.

The carrier submits that the facts and circumstances at issue, together with the accepted interpretation of the rule, do not warrant an affirmative award and we respectfully request that your Honorable Board deny the 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 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 carrier relies on Rule 18 to support its position. This rule is captioned, "Reduction In Forces." The record in the instant case does not support their contention; therefore, this rule is not applicable in the instant claim.

Rule 8 provides in part as follows:

"* * * An employee transferred from one shift to another at the Company's request, or when compelled to transfer from one shift to another, will be paid overtime rates only for the first shift worked under the new assignment. When he has worked two shifts or more on the new assignment, he will be considered transferred to the new shift. If again transferred to another shift, or his former shift, he will be paid in the manner as provided above."

The claimant received the following notice January 30, 1948:

"You are hereby notified to report to Mr. Fred Hall, tomorrow Saturday, Jan. 31st, as Machinist, Floor side, first shift."

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1949.