

Award No. 1388

Docket No. 1309

2-Montour-FT-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Federated Trades)**

MONTOUR RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement the employes on the dates appearing after their respective names specified below:

Machinist Theodore C. Seymour	November 26 and 29, 1948
Machinist Helper Andrew E. Tkacik	November 26 and 29, 1948
Boilermaker Lajos Kiss	November 26 and 29, 1948
Boilermaker Dan Nolfi	November 26 and 29, 1948
Boilermaker Helper Cesidio DiVito	November 26 and 29, 1948
Boilermaker Helper John Swgouski	November 26 and 29, 1948
Sheet Metal Worker Paul T. Lucci	November 26 and 29, 1948

were each improperly compensated at the straight time rate instead of overtime rates for having been changed from one shift to another.

2—That accordingly the carrier be ordered to additionally compensate each of these above named employes on the aforesaid dates at overtime rates or in the amount of eight (8) hours each at their respective applicable straight time rates of pay.

EMPLOYEES' STATEMENT OF FACTS: The above named claimant employes were regularly employed by the carrier on the 8:00 A.M. to 4:30 P.M. shift until the close of their shift on November 25, 1949.

The carrier effected a reduction in expenses by reducing the forces effective at 12:01 A.M. on November 26, 1948, until 12:01 A.M. November 29, 1948. This cancelled the right of these claimant employes to remain on their regular 8:00 A.M. shift assignment, and which thereby caused them, namely:

- 1—Machinist Seymour and Machinist Helper Tkacik to accept employment on another shift, 4:00 P.M. to 12 Midnight, beginning with November 26, 1948.
- 2—Boilermaker Kiss and Boilermaker Helper DiVito to accept employment on another shift, 4:00 P.M. to 12 Midnight, beginning with November 26, 1948.

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.

Rule 10 provided "Employes changed from one shift to another will be paid overtime rates for the first shift of each change. Employes working two or more shifts on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employes involved."

The record discloses that claimants were changed from one shift to another and back again by mandatory acts of the carrier for its own economic benefit in the reduction and restoration of forces, under Rules 19 and 21.

Thus the shifts involved were not "exchanged." Rather claimants were "changed" from one shift to another on November 26, 1948, and November 29, 1948, respectively, within the purview of Rule 10 for each of which change they should have each been paid overtime rates. Under comparable circumstances this Division has so held in Awards 237, 466, 467, 1161, 1235 and 1329. They are controlling. Therefore, the claim should be and is sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1950.