

Award No. 1390

Docket No. 1314

2-MV-MA-'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. 52, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Machinists)**

MIDLAND VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Machinist W. G. Worrell was changed from working on the 7:30 A.M. shift to working on another shift newly established to begin at 6 A.M., effective June 1, 1949, and that accordingly the carrier be ordered to additionally compensate this claimant at the overtime rates.

EMPLOYES' STATEMENT OF FACTS: Machinist W. G. Worrell, hereinafter referred to as the claimant, was regularly employed by the carrier at Muskogee, Oklahoma, with an assignment of hours, along with other employes, from 7:30 A.M. to 4:30 P.M., with a lunch period of one hour, from 11 A.M. to 12 Noon, until June 1, 1949.

The carrier operated at this point in the roundhouse, in addition to the above shift hours, three other shifts with assignment of hours from 7 A.M. to 3 P.M., 3 P.M. to 11 P.M. and 11 P.M. to 7 A.M., prior and subsequent to June 1, 1949.

The carrier created a one-man additional shift assignment of hours effective June 1, 1949, from 6 A.M. to 3 P.M., with a lunch period of one hour, from 11 A.M. to 12 Noon, and changed the claimant from starting work at 7:30 A.M. to beginning work at 6 A.M., effective June 1, 1949.

The agreement effective September 1, 1944, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the day shifts are those established within the limits of Rule 2(b), i.e., "not earlier than 7 A.M. nor later than 8 A.M.", and that within the meaning of this provision of the rule the foregoing facts disclose, without any doubt, that the claimant was changed from one shift to another, for which service he was entitled to be paid overtime rates under the terms of Rule 3(i) for his services on June 1, 1949. This Rule 3(i) reads:

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

3. That the interpretation and application of the rules as applied by the other organizations parties to the agreement be continued.

4. That the circumstances and language of the rules involved do not warrant an award reversing an accepted interpretation of long standing.

The carrier submits that the facts and circumstances at issue, together with the accepted interpretation of the rules, 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 waived right of appearance at hearing thereon.

Insofar as important here Rule 2(b) provides that when one or two shifts are worked, except as otherwise outlined, the regular working hours for day men will commence not earlier than 7:00 A.M. nor later than 8:00 A.M. Rule 2(d) provides that where three shifts are employed, starting time of the first shall be governed by 2(b) with starting time of other shifts regulated accordingly—each shift to consist of 8 consecutive hours. Rule 2(e) an applicable qualified exception to Rules 2(b) and 2(d), provides that the starting time of roundhouse motor car and train yard forces may be arranged to meet the needs of the service but only employes necessary to protect the service will have an assigned starting time different from that of the regular forces.

Concededly the carrier had the right to make the change here involved under Rule 2(e). The question is whether or not it could do so without payment to claimant of overtime rates for the first shift of the change. In that connection it will be noted that Rule 2(e) did not by its terms make ineffective the appropriate application of overtime rules.

In Awards 1058, 1153 and 1361 this Division has approved the statement that "a shift is a tour of duty constituting a day's work for one or more employes performing the same class of work . . . at the same station who begin work and quit work at the same time".

In light thereof and the record before us the Division concludes that claimant was changed from one shift to another and should have been paid overtime rates for the first shift thereof as provided in Rule 3(i). Therefore the claim should be and is sustained.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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