

Award No. 1422
Docket No. 1328
2-CMStP&P-SM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement, Sheet Metal Workers John Washburn, Gust Musser, Walter Bzdawka, Lott Wimer, and Sheet Metal Worker Helpers Edwin Hawkinson, Alois Lewandowski, Claude Augustine and Gustave Miller, are each entitled to be additionally compensated at the time and one-half rate for having been changed from working on the 7:30 A. M. to 4:00 P. M. shift on February 19, 1949, to working on another shift effective February 21, 1949 and that, accordingly, the carrier be ordered to so compensate these employees.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Workers Washburn, Musser, Bzdawka and Wimer and Sheet Metal Worker Helpers Hawkinson, Lewandowski, Augustine and Miller (hereinafter referred to as the claimants) are employed by the carrier at Milwaukee, Wisconsin, and were regularly assigned to work the 7:30 A. M. to 4:00 P. M. shift on and prior to February 19, 1949. The carrier, however, made the election to reduce the force at the close of the first shift Saturday, February 19, and this is affirmed by the copy of notice submitted, dated February 15, 1949, identified as Exhibit A. Concurrently with this action the carrier then elected to change these claimants from that shift to another shift from 4:00 P. M. to 12:15 A. M. effective Monday, February 21, 1949, and at all times since, the carrier has declined to compensate these claimants at the time and one-half rate for this change of shifts.

The agreement, effective June 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted to be the System Federation's understanding of its aforementioned good faith agreement with the carrier that these claimants were changed from working on the 7:30 A. M. to 4:00 P. M. shift ending with Saturday, February 19, to working on another shift from 4:00 P. M. to 12:15 A. M., beginning with Monday, February 21, 1949, and that they were subject to be paid the time and one-half rate therefor within the explicit provisions of Rule 13 which reads:

with the last sentence of Rule 13, quoted above, no payment is due them under that rule.

The employes have referred to Second Division Award 1329 in connection with which we should like to state we do not understand the basis for that award, if we clearly understand the circumstances which prevailed, yet we wish to point out that in the instant case, it cannot be held that the carrier compelled the eight (8) employes to exercise seniority because the eight (8) employes were designated by joint action as between the shop foreman and the shop committeeman. It was therefore necessary for the eight (8) employes who began work on the second shift on February 21, 1949, to exercise their seniority to those assignments, otherwise they would have been without employment. We point also to the fact that the designation of the eight (8) employes by the shop foreman and the shop committeeman was in accordance with the past practice which has never involved the penalty now sought by the employes.

We submit that Rule 13 was never written with the intent that the carrier would be subjected to the penalty of one-half time additional payment, which is involved in this claim, when it is found necessary to make force reductions and in doing so, permit senior employes to move from one shift to another for employment and avoid the retention of junior employes in preference to the senior employes.

The last sentence of Rule 13 was added at the carrier's request and it is the intent of that sentence to make inapplicable the provisions of Rule 13 in **ALL** cases, of which the instant case is one, where employes move from one shift to another by exercise of seniority.

We do not feel it can be properly held that the carrier, in this instance, changed the eight (8) employes from one shift to another. It will be borne in mind, of course, that the eight (8) employes who were filling the positions were laid off by joint action of the shop foreman and shop committeeman and by similar action, eight (8) of the forty (40) employes remaining on the first shift were designated to fill the eight (8) vacant positions on the second shift as there were only thirty-two (32) positions remaining on the first shift.

We maintain that the eight (8) employes involved in this claim would have been without employment had they not moved to the second shift and when they did make such a move to secure the only positions open to them, that constituted the exercise of seniority on their part within the intent and meaning of the last sentence of Rule 13.

The carrier feels the claim is not supported by the schedule rule and we respectfully request that same be declined.

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 in a reduction of force followed the procedure prescribed by the seniority rules of furloughing employes in inverse order of seniority. A consequence was to make vacant the eight jobs on the second shift. In

such circumstance the carrier assigns to the vacancies the junior employes still retained. This does not constitute an exercise of seniority under Rule 13.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1951.