

Award No. 1816

Docket No. 1713

2-T&P-CM-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Carmen)**

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement 24 Carmen and 8 Carmen Helpers were improperly compensated when they were changed from working on other shifts to working on the first shift on January 13, 1953.

2. That accordingly the Carrier be ordered to additionally compensate these employes hereinafter named in the amount of 4 hours at their applicable pro rata rates of pay for having been changed from other shifts to the first shift on the aforesaid date:

**A—Carmen:**

E. L. Kay	Lawrence Soap
G. E. Parenti	J. T. Wood

**B—Carmen Helpers upgraded to Carmen:**

O. R. Alexander	E. L. Morris
W. W. Clayton	L. Morrison
H. W. Ford	R. D. Munden
R. L. George	R. A. Ruff
Amos Gilbert	R. E. Singletary
W. A. McAlexander	E. Tucker
G. W. Montgomery	C. W. Welch
R. L. Morgan	H. West

**C—Apprentices upgraded to Carmen:**

B. R. Ellis	D. B. Oden
J. O. Q. Miles	T. R. Volterman

**D—Carmen Helpers:**

C. E. Cornelius	H. B. Mims Sr.
J. W. Godwin	H. A. Ragon Jr.
H. L. Green	E. E. Spradling
B. A. McDonald	A. C. Young

and since the claimants were changed from one shift to another by the carrier, Rule 2 (m) applied and the payment was made accordingly.

The employees also make reference to National Railroad Adjustment Board, 2nd Division, Awards 237, 466, 467, 1161 and 1329. It will be apparent in consideration of these awards that they are based on different rules and the same facts are not involved, and they will not support the claim herein at issue. Awards 237, 466 and 467 do not cover any claim of a person whose position was abolished as herein; Award 1161 was decided on the carrier's letter that it was—"at the instance of the carrier," and Award 1329 involves the same principle.

**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.

Prior to January 9, 1953, carrier had 82 Carmen and Carmen Helpers working in the Erecting Shops at Marshall, Texas. These men had been assigned by bulletin to a work program of building 250 new gondola cars. On January 9, 1953, these jobs were abolished and the employes directed to place themselves in line with seniority. On January 5, 1953, the carrier bulletined 80 new positions at Marshall. Some of the employes whose positions had been abolished bid on and were assigned to new positions. Claimants are 24 Carmen and 8 Carmen Helpers who did not bid on these new positions or exercise their seniority thereto, but were subsequently assigned by the carrier. The organization contends that claimants are entitled to overtime rates for the first shift of their new positions under Rule 2 (m), current agreement, which provides in part:

"An employe changed from one shift to another will be paid overtime rates for the first shift of each change. An employe working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employe involved, or in the exercise of his seniority."

We point out that the change in shift rule does not apply in this case. There was no change of shifts within the meaning of the rule. The positions of these claimants in the erecting shops were abolished. There were no shifts on the abolished positions remaining to which a change could be made. New positions were bulletined upon which claimants could bid. If they had a choice of positions, they should have bid. Upon failure to bid, carrier could assign them to unfilled positions in accordance with their seniority which the carrier did. They assumed the shift to which they voluntarily permitted themselves to be assigned—they did not change from one shift to another within the meaning of the first sentence of Rule 2 (m). They were changed to a new shift on a new position to which they were entitled by seniority. Claimants cannot profit in such a situation as we have here by the expedient of failing to bid on new positions and accepting that to which their seniority entitles them. Award 1546.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1954.