

Award No. 1949
Docket No. 1804
2-WAB-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electricians)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Electrician Robert Lee Ames was improperly compensated for changing from one shift to another on October 15, 1952.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Electrician in the amount of four (4) hours' Pay at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Electrician Robert Lee Ames, (hereinafter referred to as the claimant) was employed on October 2, 1952 by the carrier in the locomotive department, Decatur, Illinois. The claimant was used to fill a new position in the locomotive shop with hours of 7:00 A. M. to 12:00—12:30 P. M. to 3:30 P. M. This new position was bulletined on October 7, 1952, a copy of which is submitted herewith and identified as Exhibit A. On October 14, 1952, a bulletin was posted assigning Electrician George Jones to the position bulletined October 7, 1952, a copy of which is submitted herewith and identified as Exhibit B. Electrician Jones' former assignment was on the 3:00 P. M. to 11:00 P. M. shift in the Decatur diesel shop, which was vacant, and under date of October 14, 1952, Shop Superintendent W. N. Dempster instructed the claimant in writing to report for work at the Decatur diesel shop on October 15, on the 3:00 P. M. to 11:00 P. M. shift, copy of which is submitted herewith and identified as Exhibit C.

The carrier compensated the claimant at the straight time rate for the hours 3:00 P. M. to 11:00 P. M. on October 15.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective June 1, 1939, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant was not properly compensated for service he performed on October 15, 1952 on the 3:00 P. M. to 11:00 P. M. shift under Rule 10, which reads as follows:

An employe exercising his seniority rights under this rule will do so without expense to the carrier."

POSITION OF CARRIER: It is the position of the carrier that the rules of the controlling agreement do not support the employes' contention as set forth in their ex parte statement of claim.

In their handling of this case on the property, the committee relied upon the provisions of Rule 10 to support their contention that the claimant should be compensated at overtime rate for work performed on the 3:00 P. M. to 11:00 P. M. shift, October 15, 1952.

The interpretation of Rule 10 reads in part:

"Rule 10 contemplates that an employe changing shifts due to exercising his seniority rights, * * *, will be paid at his regular rate when changing shifts, instead of being allowed time and one-half time for the first shift of such change."

A new position which came into existence when the claimant was employed was bulletined in accordance with provisions of Rule 14, and it was bid in by George Jones, a senior employe. Electrician Ames then moved to the position formerly occupied by Jones on the 3:00 P. M. to 11:00 P. M. shift and, in accordance with Rule 14, the position vacated by Jones, when he secured the new position by bid, was also bulletined. Since the claimant was displaced from the new position, which he occupied temporarily while that position was advertised for bids, he was bound to exercise what rights he had to secure the only position open to him, which was that vacated by Electrician Jones on the 3:00 P. M. to 11:00 P. M. shift.

The claimant did not go to the position vacated by Jones on the 3:00 P. M. to 11:00 P. M. shift at the instance or for the convenience of the carrier, nor was the move a consequence of steps taken by the carrier.

The claimant did not make any protest about moving to the 3:00 P. M. to 11:00 P. M. shift, nor did he ask for any other job.

Rule 10 and its accompanying interpretation contemplate payment of overtime for the purpose of protecting employes from loss when they are required to change shifts by the carrier. In this case there was no act of the carrier which set in motion the events which caused the claimant to change shifts. On the contrary, all of the procedure followed by the carrier was mandatory under rules of the agreement. The employes' contention as set forth in their statement of claim is tantamount to saying that the carrier should be penalized for doing what it was compelled to do by provisions of the agreement. The change in shifts on the part of claimant came about as a result of a senior employe bidding in the new position occupied by claimant when that position was bulletined in accordance with the rules.

The contentions of the committee should be dismissed and the claim denied.

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.

Claimant upon being employed was used temporarily to fill a newly-created position. Subsequently the position was bulletined and bid in by an

employee exercising his seniority. The position vacated by the successful bidder was bulletined and on the same date, claimant was instructed by letter to report upon the vacant latter shift.

Rule 10 provides, in part, as follows:

“Employees changed from one shift to another, will be paid over-time rates for the first shift of each change. * * * This will not apply when shifts are exchanged at the request of the employees involved.”

Claimant was paid straight time rate for the first shift worked after the assignment and claims an additional four hours compensation is due him under the quoted rule.

The carrier resists the claim, relying upon the following agreed-upon interpretation of the said rule:

“Rule 10 contemplates that an employe changing shifts **due to exercising his seniority rights**, * * * will be paid at his regular rate when changing shifts, instead of being allowed time and one-half time for the first shift of such change.” (Emphasis supplied)

The organization cites the second paragraph of the Interpretation as applying to these circumstances reading:

“An employe transferred from one shift to another by **direction of the management** will be paid time and one-half rate for time worked on the new shift the first day of the change. * * *” (Emphasis supplied)

The first paragraph of the Interpretation relied upon by the carrier expressly ties the straight time rate to instances where an employe exercises his seniority rights. There was nothing done by the claimant in this case which can be said to be in the exercise of his seniority rights. The case would be different if he had bid upon the bulletin position to which he was later instructed to fill. There is nothing in the submission to indicate that he requested the assignment. Because of lack of bids, the carrier was left with a vacant position and it took it upon itself to assign claimant to fill it, primarily for its own convenience and benefit. Awards 1243 and 1317 of this Division, decided without a referee, are persuasive. Rule 10 has not been complied with by carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1955.