Award No. 2224

Docket No. 2057

2-IGN-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carmen E. L. Johnson was improperly compensated at straight time rate for services performed Thursday, July 22, 1954 on the 3:00 P. M. to 11:00 P. M. shift.

2. That accordingly the carrier be ordered to compensate Mr. Johnson additionally in the amount of 4 hours pay at the straight time rate for services performed on July 22, 1954

EMPLOYES' STATEMENT OF FACTS: Carman Johnson, hereinafter referred to as the claimant, is employed as such with an assignment of Saturday and Sunday from 8:00 A. M. to 5:00 P. M. on speed rip, Wednesday, Thursday and Friday, South San Antonio from 7:00 A. M. to 3:30 P. M. Due to a reduction in force, the claimant was forced to work in the train yard from 3:00 P. M. to 11:00 P. M. in order to remain in the service, starting Thursday, July 22, 1954.

This dispute was handled in accordance with the provisions of the current agreement up to and including the highest carrier official to whom such matters are subject to being appealed without satisfactory results.

The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that Rule 10 of the current agreement reads as follows:

"Employes changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply

We know of no reason why the findings of your Board in Award No. 1816 are not equally applicable in the case under consideration.

See also Second Division Award No. 1276.

In light of the foregoing record it is the position of carrier, clearly supported by previous rulings of your Board, that the contention and claim of the employes are without merit or basis under the applicable rule of the governing agreement and should, therefore, be 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 was the occupant of a regular relief assignment at San Antonio, Texas. On July 22, 1954, after a reduction of force in which his position was abolished, he elected to displace an employe working on the second shift. The organization contends that claimant is entitled to the time and one-half rate of pay for the first shift of his new position. The applicable rule is:

> "Employes changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply when returning to their regular shift nor when shifts are exchanged at the request of employes involved or in the exercise of their seniority rights." Rule 10, current agreement.

The facts in the case do not constitute a change in shifts within the meaning of the rule. Claimant's position was abolished and he was required to displace a junior employe in order to have employment with the carrier. When claimant's position was abolished he could go on furlough or exercise his seniority and displace a junior man. The latter course is an exercise of seniority within the meaning of the rule.

The rule applies only to a change of shifts by moving from one shift to another without giving up his regular shift. The words "when returning to their regular shift" contained in the rule is evidence of that fact. The purpose of the rule is to restrain the indiscriminate moving of employes from one shift to another by penalizing the carrier for so doing. But a displacement is an exercise of seniority and not a change of shifts which the rule was intended to restrain. Awards 1546, 1816, 2067, 2103.

The right to displace is contractual. It does not involve any discretion on the part of the carrier. The contention that carrier should be penalized for complying with express provisions of the agreement is not contemplated by the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2224

The majority's holding that the claimant elected to displace an employe working on the second shift is not in accord with the evidence. The claimant did not displace another employe but was changed to the second shift because of a reduction in force on that shift. The exercise of seniority implies the use of the seniority principle to gain preference in some aspect of the employment relationship. The carrier's placing of claimant on the job on the second shift to fill the place of a furloughed employe is not the equivalent of claimant exercising seniority to fill the job.

We dissent from the findings of the majority for the reason that the evidence shows that claimant was "changed from one shift to another" within the meaning of Rule 10 of the controlling agreement and claimant should have been compensated as claimed.

George Wright
R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner