

**Award No. 2225**

**Docket No. 2088**

**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.

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**PARTIES TO DISPUTE:**

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

**INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement, Carman R. B. Lively was improperly compensated for services performed March 22, 1955.

2. That accordingly the Carrier be ordered to compensate Mr. Lively additionally in the amount of 4 hours pay at the straight time rate for services performed March 22, 1955.

**EMPLOYEES' STATEMENT OF FACTS:** Carman helper R. B. Lively, hereinafter referred to as the claimant, was recalled to service on March 14, 1955, and on the same day was upgraded to carman mechanic to work from 7:00 A. M. to 4:00 P. M. on the repair track. On the same day, bulletins were posted for bids on 14 car builders positions. Car Inspector R. W. Edgeworth, who was working in the train yard from 11:00 P. M. to 7:00 A. M. was one of the successful applicants for one of the jobs and the claimant being the youngest upgraded carman on the repair track was assigned to the position held by Car Inspector Edgeworth effective March 22, 1955.

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 EMPLOYEES:** It is submitted that under Rule 10, reading as following:

"Employees 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 employees involved or in the exercise of seniority rights."

"We point out that the change in shift rule does not apply in this case. There was no change in shifts within the meaning of the rule. \* \* \* 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. \* \* \* 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."

The carrier believes that the situation involved in the present controversy is sufficiently similar to those covered by Awards 1276, 1546 and 1816, *supra*, as to be controlling in the determination of this dispute. And in the interest of consistency and harmony it is the position of carrier that this claim should likewise 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, a furloughed carman helper, was recalled to service, upgraded to carman mechanic and assigned to the repair track. On the same day fourteen (14) car builders' positions were bulletined. Car Inspector R. W. Edgeworth was one of the successful bidders. Claimant was assigned to Edgeworth's position in the train yard. It is the contention of the claimant that he should be paid at the overtime rate on the first date of his new position because his shift was changed. The applicable rule provides:

"Employees 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 the 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.

Claimant was assigned to a new position in accordance with the rules of the agreement. No contention is made that the agreement was not complied with when claimant was given Edgeworth's position. The purpose of Rule 10 is not to coerce noncompliance with agreement provisions, but to eliminate the moving of employes from and to their regular assigned shifts at the whim of the carrier. An assignment to a new position under the circumstances here shown is not a change of shifts within the purview of Rule 10. We include by reference the reasoning contained in Award 2224, released herewith.

#### 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. 2225**

The findings of the majority imply that claimant was assigned to the instant position on March 14, the date he was recalled to service and upgraded to carman mechanic. This is not accurate as claimant was not assigned to the instant position until March 22, on which date he was changed from the first shift to the third shift.

We dissent from the holding of the majority that the instant change from the first to the third shift is not a change of shifts within the purview of Rule 10. The claimant was clearly "changed from one shift to another" within the purview of Rule 10 of the controlling agreement and should have been compensated as claimed.

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