Award No. 2241
Docket No. 2053
2-PULL-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement, Car Cleaners L. Ortega was improperly compensated at straight time rate for service performed on December 15th and 17th, 1954.

(2) That under the current agreement, Car Cleaner P. Aranda was improperly compensated at straight time rate for service performed on December 27, 1954 and January 1, 1955.

(3) That accordingly the Carrier be ordered to compensate the aforesaid Car Cleaners additionally in the amount of four (4) hours pay at the straight time rate for each of the above dates.

EMPLOYES' STATEMENT OF FACTS: Car Cleaner L. Ortega, hereinafter referred to as the claimant, regularly assigned to the 8:00 A. M. to 4:30 P. M. shift, was assigned by the foreman to work Wednesday, December 15 and Thursday, December 16, 1954, on the 7:00 A. M. to 3:30 P. M. shift to fill in for Car Cleaner F. Landa while he was on his vacation. The claimant was assigned and returned to the 8:00 A. M. to 4:30 P. M. shift on Friday, December 17, 1954.

Car Cleaner P. Aranda, hereinafter referred to as the claimant, regularly assigned to the 8:00 A. M. to 4:30 P. M. shift, was assigned by the foreman to work December 27, 1954, on the 7:00 A. M. to 3:30 P. M. shift to fill in for Car Cleaner W. Pacidal while he was off on his vacation. The claimant was assigned and returned to the 8:00 A. M. to 4:30 P. M. shift on January 1, 1955.

This dispute has been handled in accordance with the provisions of the controlling agreement, up to and including the highest designated carrier officer to whom such matters may be appealed, with the result that this officer has declined to adjust this dispute.

The agreement effective June 16, 1951, as subsequently amended is controlling.

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.

This claim is made on behalf of Car Cleaners L. Ortega and P. Aranda. Each claims that on the dates set forth in their claim they changed shifts within the meaning of Rule 13 of the parties' effective agreement and therefor should have been paid at overtime rates for the services they rendered thereon rather than at the pro rata rate applicable thereto, which the company paid. In view thereof they ask for four (4) hours' pay at straight time for each of said days. We think it will be best to consider each claim separately as there is some difference therein.

On December 2, 1954 the company established Vacation Relief Position No. 3 with duration from December 9 to 31, 1954. This it was authorized to do by Article 8 of the parties' Vacation Agreement executed May 10, 1951. The position was bulletined in the Denver District as required by Rule 23 (a) and (b) of the parties' effective agreement, but no bids were received. Claimant L. Ortega was thereupon assigned to the position. This the company was authorized to do by Rule 23 (f) of the parties' agreement. The position had different starting times for several of its shifts. This resulted in the claim being filed in behalf of Ortega for December 15 and 17, 1954. But such changes in shift are all a part of a position which carrier had the right to establish and to which it had a right to assign Ortega. We do not think Rule 13 applies to any employe of the company who is properly assigned to and occupies a vacation relief position on which there are several different times during a work week when the shifts have different starting times. See Rule 1(g) of the parties' agreement.

On December 12, 1954 the company established Vacation Position No. 2 with duration from December 20 to 31, 1954. This it was authorized to do by Article 8 of the parties' Vacation Agreement executed May 10, 1951. The position was bulletined in the Denver District as was authorized by Rule 23(a) and (b) of the parties' effective agreement. No bids were received thereon so the company assigned claimant P. Aranda thereto. See Rule 23(f) of the parties' agreement. The position had different starting times which resulted in the claim here filed in behalf of Aranda for December 27, 1954. Since this change was part of the position to which Aranda had been properly assigned we do not think it comes within the intent and meaning of Rule 13 for the reasons hereinbefore set forth.

Aranda was given notice on December 22, 1954 that he would be furloughed as of December 31, 1954. However, under authority of Rule 24(c) of the parties' agreement he was permitted to remain on duty, filling the position of an employe temporarily absent because of illness. This resulted in a change of shift within the meaning of Rule 13. However, January 1, 1955 being a holiday Aranda was paid time and one-half for the services he rendered on that day as required by Rule 4(a) of the parties' agreement. Rule 5(d) of the parties' agreement provides: "There shall be no overtime on overtime; * * *." Consequently we are not authorized to again allow Aranda to be paid at the overtime rate for services rendered on that day for to do so would be violation of the foregoing provision.

In view of what we have said we find the claims to be without merit.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2241

The majority in finding that Rule 13 did not apply in the instant case ignores the fact that this rule contains but one exception and that is that "This rule will not apply when shifts are changed in the voluntary exercise of seniority."

The majority attempts to place a new construction on agreement rule 13. It has been found in previous awards of this Division that "When the language of a rule is plain as to its meaning, it is not subject to construction. It will be enforced as made." Certainly agreement rule 13 is plain as to its meaning and since this Board has no right to construe language which is so plain in its meaning as to be beyond construction we believe that the instant findings and award of the majority are erroneous.

George Wright

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner