

Award No. 2248
Docket No. 2058
2-CRI&P-MA-'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. 6, RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Machinists)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist W. H. Poor, who was forced to change from the 12 M. N.-8 A. M. shift to a 9 P. M.-5 A. M. shift on February 6, 1954 be paid an additional four (4) hours pay for the first shift of this change in accordance with the current agreement, and particularly Rule 9 thereof.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 6, 1954 the carrier had in effect at its Fort Worth roundhouse, three shifts, working 8:00 A. M.-4:00 P. M., 4:00 P. M.-12:00 M. N. and 12:00 M. N.-8:00 A. M.

Machinist W. H. Poor, hereinafter referred to as the claimant, was assigned to the 12:00 M. N.-8:00 A. M. shift. A junior machinist, N. H. Locker, was assigned to the 4:00 P. M.-12:00 M. N. shift. All machinists on the 8:00 A. M.-4:00 P. M. shift were senior to the claimant.

Effective February 6, 1954 the carrier, in an effort to reduce expenses, laid off junior machinist Locker and abolished the only jobs on the 4:00 P. M.-12:00 M. N. and 12:00 M. N.-8:00 A. M. shifts, including that of Claimant Poor. At the same time the carrier created a night shift to work 9:00 P. M.-5:00 A. M. and bulletined one machinist job on this shift.

The claimant having had his job abolished by the carrier and being unable to remain on his present shift because that shift no longer existed, bid on and was assigned to the machinist job on the newly created 9:00 P. M.-5:00 A. M. shift and claimed eight (8) hours at time and one-half rate for change of shift on this date. The claim was approved by the roundhouse foreman, however declined by the assistant master mechanic.

This claim has been handled in accordance with the current agreement effective October 16, 1948 and with the carrier's highest designated officer to whom such matters are subject to appeal on more than one occasion, with the result that this carrier officer has declined to adjust this dispute.

POSITION OF EMPLOYEES: Rule 9 of the controlling agreement reads as follows:

to the position to which he was assigned to begin February 6, 1954, no part of the agreement was violated. In making this seniority move, he is not entitled to pay at penalty rate for the first shift of his new assignment.

For this reason, this claim has been denied by the carrier and we respectfully request your Board to do likewise.

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 employees 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 February 6, 1954, carrier had a three shift operation in effect at its Fort Worth Roundhouse. Claimant was regularly assigned to the 12:00 midnight to 8:00 A. M. shift. On February 6, 1954, carrier abolished all positions on the second and third shifts and created a new position working 9:00 P. M. to 5:00 A. M., which it advertised. All first shift employes being senior to claimant and his own position having been abolished, claimant bid on and was assigned to the 9:00 P. M. to 5:00 A. M. shift, and claimed eight (8) hours at time and one-half for change of shift under Rule 9, which provides:

"Employees changed from one shift to another will be paid overtime rate for the first shift of each change. Employees working two shifts or more on a new shift (assignment) shall be considered transferred.

This rule will not apply to cases of employees exercising their rights by bidding under Rule 16 or bumping on another position when seniority entitles an employe to remain on his present shift, or where a relief position is created in which the assigned relief man performs work on different shifts of his assignment. Such relief employe will not be paid overtime rates for changing shifts to perform the work on the shifts included in his assignment."

The record shows that claimant bid on and was assigned to the new position. This is strictly an exercise of seniority. Rule 16 is based upon seniority and the voluntary exercise thereof by employees entitled to bid. An exercise of seniority under Rule 16 precludes any claim under Rule 9. The bulletining of new positions or vacancies and the assignment of employees bidding thereon on the basis of their seniority is strictly an exercise of seniority. Awards 1267, 1546, 1816, 2067, 2103, 2224.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2248

The findings of the majority reveal that the claimant was regularly assigned to the 12:00 midnight to 8:00 A. M. shift. The carrier readjusted

its forces, abolishing the shift the claimant was employed on. The majority ignored the exception provided for in the second paragraph of Rule 9 when forced to exercise bidding rights in under Rule 16. Rule 9 reads as follows:

“Employees changed from one shift to another will be paid overtime rate for the first shift of each change. Employees working two shifts or more on a new shift (assignment) shall be considered transferred.

This rule will not apply to cases of employees exercising their rights by bidding under Rule 16 or bumping on another position **when seniority entitles an employee to remain on his present shift**, or where a relief position is created in which the assigned relief man performs work on different shifts of his assignment. Such relief employee will not be paid overtime rates for changing shifts to perform the work on the shifts included in his assignment.” (Emphasis ours.)

The claimant could not remain on his **present shift**, on account of the carrier readjusting its forces and abolishing that shift—therefore the first paragraph of Rule 9 applies to the facts in this case and the claimant should have been paid as claimed.

Edward W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

George Wright