

**Award No. 2249
Docket No. 2059
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 EMPLOYES'
DEPARTMENT A. F. of L. (Machinists)**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That machinists Edward McLellan, Joseph Zinzer and W. O'Connor, who were forced to change shifts on August 31, 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.

EMPLOYES' STATEMENT OF FACTS: Prior to August 31, 1954 the carrier had in effect at its Des Moines 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.

Machinists Edward McLellan, Joseph Zinzer and W. O'Connor, hereinafter referred to as the claimants, were assigned as follows: O'Connor and Zinzer assigned to the 4:00 P. M.—12:00 M. N. shift, and McLellan was assigned to the 12:00 M. N.—8:00 A. M. shift.

Effective August 30, 1954 the carrier in an effort to reduce expenses, laid off a number of junior machinists and, at the same time, abolished all machinist and helper jobs on the three shifts at this point and established two shifts to work 8:00 A. M.—12:00 N. and 1:00 P. M. and 8:00 P. M.—4:00 A. M.

The claimants having had their jobs abolished by the carrier and being unable to remain on their present shifts because those shifts no longer existed, bid on and were assigned to machinist jobs on the newly created shifts and claimed eight (8) hours at time and one-half rate for change of shift on this date.

This claim has been handled in accordance with the current agreement effective October 16, 1948 and with the carrier 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 EMPLOYES: It will be noted from the above statement

"However, Rule 8 expressly exempts the payment of overtime when the transfer from one shift to another is made by an employee 'in the exercise of seniority rights'. This specific exemption is in no way qualified as to the act being voluntary or involuntary. In view thereof, we find it expressly covers the situation of the claimants. Therefore, we find this claim to be without merit."

Because Claimants Zinzer, McLellan and O'Connor voluntarily bid for and their seniority entitled them to the positions to which they were assigned to begin August 31, 1954, no part of the agreement was violated. In making this seniority move, they are not entitled to pay at penalty rate for the first shift of their 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 employee or employees involved in this dispute are respectively carrier and employee 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 August 30, 1954, carrier maintained a three shift operation at its Des Moines Roundhouse. Claimants were assigned to the second and third shifts. On August 30, 1954, carrier abolished all first, second and third shift positions and established two shifts to work 8:00 A.M. to 4:00 P.M. and 8:00 P.M. to 4:00 A.M. Claimants bid on and were assigned to new positions with different shifts.

The dispute is controlled by the same rules and reasoning set out in Award No. 2248. On the basis of that award, the claim must be denied.

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. 2249.

The findings of the majority reveal that the claimants were regularly assigned to the second and third shifts; the carrier readjusted its forces, abolishing the shifts the claimants were 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 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."
(Emphasis ours)

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

Edward W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

George Wright