

Award No. 2318

Docket No. 2101

2-ACL-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. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That, under the controlling Agreement, H. J. Beverly, upgraded Carman Apprentice, was improperly compensated for service rendered on his, Beverly's, rest days—Saturday and Sundays—when required to fill temporarily second shift Car Inspector vacancies having different rest days.

(b) That, accordingly, Carrier be ordered to additionally compensate Beverly the difference between the straight time hourly rate and the time and half time (overtime) hourly rate for each rest day (Saturday and Sunday) worked beginning July 17 and continuing through August 22.

EMPLOYEES' STATEMENT OF FACTS: Under date of July 12, 1954, Master Mechanic E. D. Barnett of Waycross, Georgia, posted Bulletin No. 635 advertising three (3) vacancies for car inspectors on second shift with staggered rest days—Saturday and Sunday; Monday and Tuesday; Wednesday and Thursday respectively, the bid period to close midnight July 16, 1954.

Proper bids were placed for each of the three advertised vacancies. Permanent assignments, however, were not made until July 19. In the meantime, the three vacancies were protected during the bulletin period and prior to making permanent assignments. Two of the vacancies were protected by Carmen Hays and Wiggins. The third vacancy with Wednesday and Thursday as rest days was temporarily protected by upgraded Carmen Apprentice H. J. Beverly July 16, 17 and 18. Beverly held a regular first shift—7:00 A. M. to 3:30 P. M.—five day, Monday through Friday back shop assignment with Saturdays and Sundays as rest days. He, therefore, in protecting the vacancy temporarily, was required to change shifts on the 16th and render service on his, Beverly's, regularly assigned rest days—Saturday and Sunday July 17 and 18.

Successful bidders, T. B. James, D. F. Koonce and W. H. Harvey were assigned Monday, July 19, and assumed the duties of their respective assignments at 3:00 P.M.

Beverly was the junior qualified inspector and of course was placed on the inspection force to protect this particular work. Claim declined."

It will be noted that Mr. Winters substantiates the fact that the assignments made in Bulletin No. 641 were in accordance with the current agreement. It will also be noted that Mr. Winters states "that some 22 apprentices junior to Beverly were employed the same month in which Beverly was employed." Further that, "There are 49 additional apprentices who were employed within 3 months of Beverly's seniority date, all of whom are upgraded and receiving mechanic's rate of pay."

Carrier has already acknowledged there were 406 mechanics junior to Beverly working on the date in question. Carrier also pointed out that such **is not the question at issue**. The apprentices to whom Mr. Winters has reference were, without a doubt, junior to Beverly, **but they were not qualified for inspection duties**.

Mr. Winters cites no rule violation, but merely states in the last paragraph of his letter that "we **feel** that Beverly's claim * * * * * is entirely justified * * * ." (Emphasis added). The way a person "feels" about a claim is not sufficient justification to sustain such and this claim is definitely not sustained by the agreement.

Due to Beverly being the youngest qualified car inspector, carrier, under the agreement, had no alternative other than to use him. A careful review of the facts and correspondence in this case will show that this claim is nothing more than an effort on the part of a disgruntled employe, who sought, by the filing of this claim, to force the carrier to place him on a job to which he aspired without right. Carrier, therefore, requests that the Board decline this claim.

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 an upgraded Carman Apprentice in the Back Shop at Waycross, Georgia. He was assigned 7:00 A. M. to 3:30 P. M., Monday through Friday with Saturday and Sunday as rest days.

On July 12, 1954, Carrier advertised three vacancies for Car Inspectors on the second shift with staggered rest days. Bids were received and assignments made on July 19, 1954. During the bulletin period these three positions were protected. Carman Haynes and Wiggins volunteered to fill two of them. Claimant was directed to fill the third one on July 16, 17 and 18. After July 18, claimant was used through August 23 on a temporary vacancy. He was on vacation from August 26 to 30 after which he reported for duty on his regular first shift Back Shop assignment. The claim is that Claimant be paid at the time and one-half rate for each rest day of his Back Shop assignment which he was required to work while filling the temporary vacancies.

It is contended by the carrier that the claim was not presented within the time limits prescribed by the August 21, 1954 Agreement. It is conceded that a letter of intention to file an appeal was on file with the Secretary of the

Division within the time limit, the Carrier arguing, however, that such a letter does not have the effect of giving the Board jurisdiction of this dispute on appeal. The Carrier's position is in error. See Award 2285.

There is much in the record on the part of the Organization concerning the propriety of Carrier using claimant to fill these temporary vacancies. Carrier states that claimant was the junior qualified employe having sufficient qualifications to work as a Car Inspector. The Organization has not disproved this statement in this record. Considering the nature of the claim (penalty pay for rest days worked), we do not think that it is an issue here.

The record shows that July 16, 17 and 18 fell on Friday, Saturday and Sunday, respectively. The rest days of this temporary position were Wednesday and Thursday. Claimant was paid the time and one-half rate on Friday, July 16, under Rule 9 (a), the change of shift rule. He was paid the time and one-half rate on Saturday and Sunday, July 17 and 18, because it was work in excess of 40 hours in a work week. Claimant can have no further claim for these days whether or not they were paid under the proper rule.

After July 18, claimant filled another second shift position having Tuesday and Wednesday as rest days. He now claims penalty pay for Saturdays and Sundays, July 23 and 24, July 30 and 31, August 6 and 7, August 13 and 14, and August 20 and 21. We point out that when claimant worked this temporary vacancy, his rest days were Tuesday and Wednesday, and not Saturday and Sunday. In other words, he is required to take the rest days of the position worked, the remaining five days constituting his work week. Consequently, claimant was properly paid at the pro rata rate for Saturdays and Sundays while he was working the second temporary vacancy. The claim for the difference between time and one-half and the pro rata rate for Saturdays and Sundays worked during the second temporary assignment is therefore without merit because they were not claimant's rest days.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1956.