

Award No. 2340
Docket No. 2130
2-DM&IR-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. 71, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

DULUTH, MISSABE & IRON RANGE RAILWAY CO.

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman Ernest Renaud was unjustly deprived of the right to work the first six and one-half (6½) hours of his regular shift, beginning at 7:00 A. M. on April 23, 1954, and that accordingly the Carrier be ordered to reimburse him for said hours at his regular pro rata rate.

2. That Ernest Renaud is entitled to be additionally compensated at over-time rates, under the current agreement, for having been changed from the 7:00 A. M. to 4:00 P. M. shift to a 3:00 P. M. to 11:00 P. M. shift on April 23, 1954 and that accordingly the Carrier be ordered to so compensate this employee.

EMPLOYEES' STATEMENT OF FACTS: At Proctor, Minnesota, the carrier maintains a large car repair force at their car shop. Those assigned to the first shift work 7:00 A. M. to 4:00 P. M., Monday through Friday, with one hour lunch period. Before the start of the ore shipping season, bulletins are posted for outlying jobs which are put on during the ore shipping season and the shop force is reduced considerably during the summer months.

Carman Ernest Renaud, hereinafter referred to as the claimant, was regularly employed by the carrier at the Proctor Car Shop, Monday through Friday, with assigned hours 7:00 A. M. to 4:00 P. M. On Thursday, April 22, the carrier instructed the claimant not to report for work on the 7:00 A. M. shift on Friday, April 23, but to report on the 3:00 P. M. to 11:00 P. M. shift, Friday through Tuesday, at the Duluth Ore Docks; that he being the junior employee was being transferred to fill a bulletin position.

The agreement effective January 1, 1948, as amended, is controlling.

POSITION OF EMPLOYEES: (a) That the carrier did, by first causing claimant to lay off from his regularly assigned day shift 7:00 A. M. to 4:00 P. M. date of April 23, 1954 violate provisions of Rule 8 (a) of controlling agreement.

"Rule 8 (a). When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time."

of the rule shows that it was first adopted for the purpose of stopping a practice which had been in effect requiring employes who had worked overtime to lay off without pay on subsequent days to off-set overtime which had been worked before or after regular hours on the preceding day or days. The present rule was adopted after the employes' committee, the chairman of which was Mr. A. O. Wharton, then President, Railway Employees' Department, A. F. of L., had proposed the following rule:

"No employe covered by this agreement shall be laid off to equalize time account of having worked overtime."

The rule adopted at that time and the interpretations placed upon it by the carriers and the employes has remained virtually unchanged through the years, and it is inconceivable that any such interpretation as the employes are contending for here can be sustained. The carrier has been unable to find any other case in the long history of the rule where it has ever been attempted to give the meaning to the rule that the employes in this case now claim for it.

In summary, it is the position of the carrier, under the facts and circumstances here presented, and the agreement rules controlling, that the claim of the employes in this docket should be denied in its entirety. The claim for an additional six and one-half ($6\frac{1}{2}$) hours' pay should be denied because Rule 8, (a), was not violated or even applicable in this case. The claimant was not laid off during his regular working hours on date of claim, it was not necessary that he work overtime, and he worked no overtime. The claim for time and one-half pay for working 3:00 P. M. to 11:00 P. M. on date of claim should likewise be denied. The claimant was not changed from one shift to another "at the direction of the Management" within the meaning of that term as it is used in Rule 10, (a). The claimant was assigned to the job on the 3:00 P. M. shift in accordance with his seniority rights under the bulletin rule. He could have taken a job on the 7:00 A. M. shift, but in preference thereto he took of his own volition the job on the 3:00 P. M. shift to which he was assigned.

On the basis of the whole record and all the evidence, the carrier therefore requests that the Board sustain the position of the carrier and deny the claim of the employes.

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.

Part one of Carman Ernest Renaud's claim is based on Rule 8(a) of the parties' agreement effective January 1, 1948, which provides:

"When it becomes necessary for employes to work overtime they shall not be laid off during regular hours to equalize the time."

Claimant, who had division seniority on the Missabe Division of the carrier, had been regularly employed by it at Proctor, where it maintains a large car repair force in the car shop. His work week assignment at Proctor was Monday through Friday, with Saturday and Sunday rest days, and his daily shift on his workdays was from 7:00 A. M. to 4:00 P. M. with one (1) hour off for lunch. The claim is that on Friday, April 23, 1954, Renaud was not allowed to work the first six and one-half ($6\frac{1}{2}$) hours of his regular shift at Proctor and, because of that fact, he asks to be paid therefor. The diffi-

culty with claimant's position is that the assignment he held at Proctor was terminated at 4:00 P. M. on Thursday, April 22, 1954, and consequently he held no position at Proctor on Friday, April 23, 1954. In view of that fact claimant cannot rightfully contend he was denied the right to work an assignment he no longer held.

With the advent of the iron ore shipping season carrier bulletined numerous positions at several points on its Missabe Division, including the Duluth Ore Docks. Bids were not received on all of the positions bulletined, including those bulletined at Duluth Ore Docks. In this respect Rule 15(b) of the parties' effective agreement provides:

"If the Company does not receive sufficient bids to fill the vacancies bulletined under this rule within the five (5) days after posting of the bulletin, the junior employe of the classification will be assigned to fill the vacant position or positions."

Thereupon carrier instructed claimant to report for work on Friday, April 23, 1954, at its Duluth Ore Docks to work a carman's position with a shift from 3:00 P. M. to 11:00 P. M. on that day, he being the junior employe of the classification assigned to fill a bulletined position. Claimant worked this shift on Friday, April 23, 1954, and filed a claim therefor for eight (8) hours at time and one-half, which carrier refused to pay, paying claimant therefor at the straight time rate. Under part 2 of the claim Renaud contends this was improper and that he should have been paid in accordance with the claim filed under and by authority of the provisions of Rule 10(a) of the parties' effective agreement. Rule 10(a) provides:

"Employes changed from one shift to another at the direction of the management will be paid overtime rates for the first shift of each change. An employe worked two (2) shifts or more on a new shift shall be considered transferred."

It appears, through error, the carrier paid for one (1) hour of these services at the overtime rate. However, that fact is not material here.

In order to have application Rule 10(a) as quoted, contemplates an employe must, at the time he is being placed on a shift, be holding an assignment from the shift of which he is being changed or transferred. Such is not the situation here. When claimant's assignment at Proctor was terminated he no longer held a shift on that position. Consequently, when he was placed on the new position at the Duluth Ore Docks on Friday, April 23, 1954, he cannot be said to have been "changed from one shift to another." For a more detailed discussion of this principle see Award 1816 of this Division.

In view of the foregoing we find both parts of the claim here made to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.