

Award No. 2504

Docket No. 2179

2-SLSW-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—(Carmen)**

ST. LOUIS-SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman W. R. Bradberry was improperly compensated at straight time rate for service performed on March 17, 1953. 2. That accordingly the Carrier be ordered to compensate the aforesaid Carman additionally in the amount of four (4) hours' pay at the straight time rate for the above date.

EMPLOYEES' STATEMENT OF FACTS: Carman W. R. Bradberry is employed at the shop repair track at Tyler, Texas and on March 17, 1953 was regularly assigned to work 7:00 A. M.-4:00 P. M., with Saturday and Sunday rest days. On March 17, 1953, he was instructed to work on the 3:00 P. M.-11:00 P. M. shift in the train yard to fill the position of Car Inspector E. M. Mitchum, whose rest days were Sunday and Monday. He worked on his regular assignment until 3:00 P. M., and then went to the train yard and worked Mr. Mitchum's assignment until 11:00 P. M. Claimant worked this assignment in the train yard through March 28 for the period Mr. Mitchum was on his annual vacation and then went back to his own assignment Monday morning, March 30, 1953.

POSITION OF EMPLOYEES: It is submitted that claimant is entitled to be paid the time and one-half rate on the date he was changed from one shift to another as provided by Rule 9-1, effective October 1, 1937, reading as follows:

“9-1. Employees changed from one shift to another will be paid at overtime rate for the time of the new assignment that comes within the spread of twenty-four (24) hours from the starting time of original assignment, except when the change is made in the exercise of seniority.”

It is further submitted that Rule 102 of agreement effective October 1, 1937, provides:

“The general rules will govern in all cases, except specific exceptions under special rules of each craft.”

that there was no actual change of shifts on May 19. Claim was sustained, with findings reading:

"On May 18, 1945, when Carman George Parma's vacation, from May 7, 1945, to May 18, 1945, inclusive, terminated, carrier's right to shift claimant from his regular shift to that of Parma, without penalty because of the provisions of the vacation agreement, ended. Parma's continued absence thereafter was not a continuation of his vacation but a temporary vacancy under the parties current agreement to which claimant was assigned and to which Rule 10 applied. It resulted in a change of shift from claimant's regular assignment as of May 19, 1945. He was entitled to be paid for this shift on the basis of overtime. The claim should be allowed."

It was thus clearly recognized that the carrier had the right to:

"* * * shift claimant from his regular shift to that of Parma, without penalty because of the provisions of the vacation agreement * * *." (Emphasis ours).

even though decision was that it did not have the same right to move him to another shift for other relief without penalty.

It is clear the claim is not supported by the rules, and carrier respectfully submits that the claim should be denied.

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.

Disposition of this claim is governed by our recent Award No. 2440. In addition to the contentions made in that case, the employes here contend that the claimant was not a regularly assigned relief employe and that Referee Morse' decision is not applicable to him.

That contention cannot be sustained because in the interpretations made by the committee, established pursuant to Article 14 of the Vacation Agreement, on July 20, 1942, it is agreed that the term "relief workers" used in Article 12(a) describes in general terms all employes who fill the positions of vacationing employes. Moreover Question (b) under Article 12(a), which resulted in the controlling decision by Referee Morse, referred to an employe transferred from the second shift to the third shift to fill a vacationing employe's position. Factually the proposition there presented is identical to this case except for the shift numbers.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1957.

Dissent of labor members to Awards Nos. 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2504.

We are constrained to dissent from the majority findings in the above-enumerated awards for the reasons set forth in our dissents to Awards Nos. 2083, 2084, 2197, 2205, 2250, and 2243.

It is our considered opinion that Awards Nos. 1514, 1806, and 1807 of the Second Division should have been followed and the overtime rates embodied in the schedule agreements should have been applied.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink