

Award No. 2709
Docket No. 2525
2-K&IT-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Carmen)**

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman J. H. Zachery was insufficiently compensated for service performed on July 17, 1955 between the hours of 11:15 P.M. and 7:15 A.M., and again on August 6, 1955 between the hours of 7:15 A.M. and 3:45 P.M.

2. That accordingly the carrier be ordered to additionally compensate Carman Zachery in the amount of four (4) hours pay at straight time rate for each of the aforesaid periods.

EMPLOYEES' STATEMENT OF FACTS: Carman J. H. Zachery, hereinafter referred to as the claimant, is regularly assigned to the carrier's shop track at Louisville, Kentucky with a first shift assignment of 7:15 A.M. to 3:45 P.M., Wednesday through Sunday.

On Sunday, July 17, 1955 the claimant was required by the carrier to change from his first shift shop track assignment to a third shift train yard assignment with hours from 11:15 P.M. to 7:15 A.M. to fill the job of vacationing Carman (Car Inspector) C. D. Gunther. The work week and location assignment of Carman Gunther was Sunday through Thursday in L. S. Junction Train Yard, Louisville, Kentucky.

On August 6, 1955 the claimant was again changed from the third shift assignment, 11:15 P.M. to 7:15 A.M., by the carrier, to his original assignment of 7:15 A.M. to 3:45 P.M.

ploye Barnes on August 7, 1952, returned to his regular assignment, 7:15 A.M.—3:15 P.M., claimed and was paid 8 hours at the straight time rate.

Exhibit H, Time Card No. 1, reveals that Carman Roy S. Barnes worked his regular assignment, 7:15 A.M.—3:45 P.M., on August 14, 1953, and had a rest day on August 15. Time Card No. 2 shows that employe Barnes changed shifts (11:15 P.M.—7:15 A.M.) on August 16, 1953, to fill a vacation vacancy, claimed and was paid a day's pay at straight time rate. Time Card No. 2 also shows that employe Barnes on August 30, 1953, returned to his regular 7:15 A.M.—3:45 P.M. assignment, claimed and was paid a day's pay at straight time rate. Again, on August 31, 1953, employe Barnes transferred to another shift (11:15 P.M.—7:15 A.M.) to fill a vacation vacancy, claimed and was paid a day's pay at the straight time rate.

Exhibit I, Time Card No. 1, reveals that Carman Arthur R. Zinsmeister worked his regular assignment, 7:15 A.M.—3:15 P.M., on August 15, 1954, and Time Card No. 2, shows that employe Zinsmeister changed shifts (3:15 P.M.—11:15 P.M.) on August 16, 1954, to fill a vacation vacancy. Employe Zinsmeister claimed and was paid one day's pay at the straight time rate for service performed on that date. On August 25, 1954, Employe Zinsmeister returned to his regular first trick job, claimed and was paid one day's pay at the straight time rate.

Throughout the entire period from the date of Referee Morse's award of November 12, 1942, to July 16, 1955, the employes neither claimed or were allowed a day's pay at overtime rate for changing shifts to fill vacation vacancies. The practice being consistent as reflected in the evidence introduced above, the claim of the organization 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.

This claim is for time and one-half under Rule 10, Changing Shifts, wherein a regularly assigned employe was used to relieve an employe on another shift while the latter was on vacation. When the vacation employe returned, the claimant returned to his own assignment. Identical claims were sustained by this Division, Awards 1806 and 1807 and have been denied by this Division, Awards 2083, 2084, 2197, 2440 and others. We believe that the findings as set forth in Awards 2197 and 2440 should prevail and we abide by the findings in those two awards and adopt them as our findings. We add particular emphasis to those findings wherein it is said:

(1) That carrier put into practice the specific holding of the referee dealing with the subject matter here involved. For about eleven (11) years the organization, without objection, accepted such application of the referee's holding.

(2) That on August 21, 1954 the carrier and the organization entered into a National Vacation Agreement making certain changes in the vacation agreement of December 17, 1941, and the supplements thereto. "In Article 1, Section 6, it provides that * * * the said (vacation) Supplemental Agreement of February 23, 1945, as made by the parties * * * and by Referee Morris in his award of November 12, 1942, shall remain in full force and effect."

We find that the carrier properly paid claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2709

We are constrained to dissent from the findings and award if the majority for the reasons set forth in our dissents to Awards 2083, 2084, 2197, and 2440, which awards are apparently relied upon by the majority. It is our considered opinion that Awards 1514, 1806, and 1807 of the Second Division are correct and should have been followed in the instant case. As stated in the findings in Award 1806 "all schedule agreement rules remain in force after the execution of the vacation agreement and, in the absence of negotiated changes, they are to be enforced according to their terms."

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink