

**Award No. 2789**

**Docket No. 2575**

**2-MP-FO-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO, (Firemen and Oilers)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Laborers P. Stanback, L. P. Brack and O. Stennis were improperly compensated for March 22, 1955 when changed from one shift to another.
2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Laborers each in the amount of four hours' pay at the applicable rate of pay for March 22, 1955.

**EMPLOYEES' STATEMENT OF FACTS:** Laborers P. Stanback, L. P. Brack and O. Stennis (hereinafter referred to as the claimants), were employed by the Missouri Pacific Railroad Company (hereinafter referred to as the carrier), at Dupon, Illinois, as such.

On March 18, 1955, Bulletin No. 1023 was posted at 9:35 A.M., furloughing three laborers. Copy of Bulletin No. 1023 is submitted herewith and identified as Exhibit A.

On March 18, 1955, Bulletin No. 1024 was posted at 9:35 A.M., abolishing three laborers' positions. Submitted herewith is copy of Bulletin No. 1024, which is identified as Exhibit B.

As a result of Bulletin No. 1023, the carrier elected to rearrange forces which resulted in Bulletin No. 1024 and the claimants changing from one shift to another.

Laborers P. Stanback and L. P. Brack were formerly assigned on the 4:00 P.M. to 12 Midnight shift, which shift was abolished, and due to the carrier's action, they were forced to go on the 8:00 P.M. to 12 Midnight, 12:30 A.M. to 4:30 A.M. shift. Laborer Stennis was formerly assigned to work

and one-half pay for working the first shift of his new position under a rule such as we have before us. Awards 1546, 1816."

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"The record shows that claimants W. W. Walker and J. G. Via were able, because of their seniority, to displace junior employees on the first shift. Since the first shift was not disturbed by the rearrangement of forces, it is clear that these two employees exercised their seniority in a situation different than contemplated by (e) in the agreed upon interpretation. The change of shift was due solely to their exercise of seniority and they are not entitled to time and one-half for the first shift worked after they displaced on the first shift."

After finding that Rule 10 of the shop crafts agreement there in issue in Award No. 2296, which is identical to Rule 5 of the Firemen and Oilers Agreement here applicable, **did not** support the claims of those who bid on newly established positions, your Board found that an agreement of November 27, 1940, applicable to **shop craft employees only**, had interpreted Rule 10 of the shop crafts agreement and based upon that interpretation under the facts present there, those who bid and were assigned to newly established positions were entitled to time and one-half, but those who exercised seniority on positions which had not been disturbed were **not** and their claims were **denied**.

Since the language contained in Rule 5 here applicable is identical to the language contained in Rule 10 applicable to the dispute in Docket No. 2102 (Award No. 2296), the findings of your Board interpreting Rule 10 is equally applicable here, which requires a denial award.

It is important to remember that the firemen and oilers are not a party to the interpretation of the parties (carrier and shop crafts) dated November 27, 1940, referred to in the findings of Award No. 2296, (designated as Decision SC-69) thus the portion of the findings dealing therewith cannot be applicable here or properly considered as a precedent.

Furthermore, Walker and Via, discussed in the last paragraph of your Findings in Award No. 2296, displaced on existing positions, as did the claimants here, and their claims were found to be without merit, even under Decision SC-69 to which the firemen and oilers involved in the instant dispute are not a party.

For the reasons set forth in this submission there is no basis for these claims and they should therefore 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.

On March 18, 1955 when carrier posted bulletin No. 1024, the jobs of claimants Stanback and Stennis were abolished. Beginning March 22, their starting time was changed. Stanback who had been starting at 4:00 P.M. and Stennis who had been starting at 12 M., both began work at 8:00 P.M. The claim is base on Rule 5 which reads in part "Employees changed from one shift to another will be paid overtime rates for the first shift of such change."

It is argued that when the carrier furloughed three (3) men and followed up with a job abolishment of three (3) men, that those whose jobs were abolished were being changed by the management and that they were not in fact exercising their seniority.

Award No. 2296 (Carter), System Federation (Machinists) and Missouri Pacific Railroad holds that where a carrier changed from two (2) shift to three (3) shift operations, the interpretation of Rule 10 entitles employes "to \* \* \* time and one-half \* \* \* when shifts are changed in the rearranging of forces, in force reductions and where Management changes them \* \* \* for its own purposes."

All formal agreements executed by the parties should at all times be available for consideration in interpreting their mutual rights. Decision No. SC-74, dated at St. Louis December 9, 1940, now included in this docket is an expression of understanding which is not to be considered as new material at whatever time introduced during the progress of this docket before this Division.

In conformity with Award No. 2296, we are of the opinion that the claim presented for Stanback and Stennis should be sustained.

#### AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.