

Award No. 2843

Docket No. 2554

2-MP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement, particularly Rule 8, overtime board and Rule 10 at Van Buren, Arkansas, on November 6th, 7th, 8th and 9th, 1955.

2. That accordingly the Carrier be ordered to additionally compensate Carman J. D. Brannams eight (8) hours at the time and one-half rate for November 6th, 7th and 8th, 1955 and Mr. M. M. Shultz four (4) hours at the straight time rate for November 9th, 1955.

EMPLOYES' STATEMENT OF FACTS: On Sunday, November 6, 1955, Mr. T. O. Hampton, car inspector, regularly assigned from 12 midnight to 8:00 A.M., Friday through Tuesday, rest days Wednesday and Thursday, had a death in his family and called his car foreman to report off; however, being unable to reach the car foreman on this particular Sunday afternoon, he again tried to reach him later, but to no avail. Therefore, Mr. Hampton called his local chairman, Mr. M. M. Shultz, and advised him of the death in his family and asked Mr. Shultz to report him off to his car foreman, Mr. W. H. Ridlin. Mr. Hampton advised Mr. Shultz that he would be off three (3) nights and later Mr. Shultz, after talking to Mr. Hampton, called Car Foreman Ridlin at 5:00 P.M. (November 6) and advised him that Mr. Hampton wanted to be reported as laying off account of a death in his family and that he would be off for three (3) nights. Local Chairman Shultz also informed Mr. Ridlin that Mr. J. D. Brannams was next out on the overtime board to fill this temporary vacancy which was known to be for only three nights; however, the car foreman advised Mr. Shultz to fill this job, which Mr. Shultz did on November 6, 7 and 8, per the instructions issued by Car Foreman Ridlin, and returned to his own job the following morning (November 9) at 7:30 A.M.

The carrier categorically denies that it ever agreed to fill all temporary vacancies from the overtime board for the first three days or for any other period.

For the reasons fully set forth in this submission, there is no basis for these claims and they must, 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.

This is a claim that the carrier violated Rule 8 (Overtime Board) and Rule 10 (Changing Shifts) as interpreted by decision SC-69. The undisputed facts are in general as follows:

Car Inspector Hampton being unable to reach his foreman, got in touch with Chairman Shultz. Hampton's request to lay off three (3) days because of a death in his family was relayed thereafter by Shultz to the foreman. He also advised that Brannams was the man on the extra board who should be called.

Instead the foreman ordered Shultz himself to move from his first shift assignment and work Hampton's midnight shift job. Shultz followed the orders and was paid time and one-half for his first turn on Hampton's trick but he was not paid time and one-half on returning to his own assignment. He now makes claim for this additional four (4) hours. Brannams makes claim for three (3) days at time and one-half because he was not given the Hampton work.

Rule 10 reads in part as follows:

"Employes changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply when returning to their regular shift * * *."

It seems clear that the language of Rule 10 does not preclude the carrier from transferring as was done here unless Rule 8 requires differently. The brotherhood argues that the practice followed in applying Rule 10 is contrary to the meaning which the carrier now attaches. The carrier denies the existence of any such practice. It is noted that some claims have been paid in cases where the overtime board has not been permitted by the carrier to function. It is also noted that the organization has not conceded the propriety of the five (5) steps outlined by the carrier in its letter of May 21, 1954. In particular, the organization has continued to resist the application of step (2) * * * the changing of junior man on another shift * * *.

The failure to call the ranking man from the overtime board under the present circumstances nullifies Rule 8.

AWARD

Claim of J. D. Brannams sustained at pro-rata rate.

Claim of M. M. Shultz denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1958.

CARRIER MEMBERS DISSENT TO AWARD 2843, DOCKET 2554

The record shows the vacancies were November 6, 7 and 8, 1955. Quoting from the Employees' Submission, Page 2:

"It was understood that in the filling of temporary vacancies where it was known that an employe would not be off in excess of three (3) days and it was necessary to fill his job, then the vacancy would be filled from the overtime board * * *."

These vacancies were for three days.

The following is quoted from Employees' Exhibit B2 and B3 dated July 22, 1953 and March 16, 1954, respectively, addressed to Mr. W. H. Bond, General Chairman-Carmen, St. Louis, Mo., signed by Mr. T. Short, which paragraph is identical in both letters:

"We have no objection to the establishment of a separate overtime board for inspectors at Wichita from which vacancies in car inspector position of not more than two days occurring on the second or third shifts may be filled."

The employes have failed to show any agreement to support their contention. To the contrary, Exhibits B2 and B3 quoted above, support the carrier's position.

J. A. Anderson

E. H. Fitcher

D. H. Hicks

R. P. Johnson

M. E. Somerlott

CONCURRING OPINION OF LABOR MEMBERS TO AWARD NO. 2843

We concur with the majority's finding that "The failure to call the ranking man from the overtime board under the present circumstances nullifies Rule 8" and requires that the claim of J. D. Brannams be sustained but are

constrained to point out that the claim of M. M. Shultz should also have been sustained for the reason that Rule 10 of the current agreement, as interpreted by Decision SC-69, requires that Claimant Shultz be paid time and one-half. (See Second Division Awards 2296 and 2844.)

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

J. B. Zink