

Award No. 2893

Docket No. 2415

2-AA-FT-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 77, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Federated Trades)**

ANN ARBOR RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the following employees were improperly compensated for service performed on dates following their names.

Machinist LeRoy Swartz—June 6, 1955
Machinist LeRoy Swartz—June 20, 1955
Machinist LeRoy Swartz—June 25, 1955
Machinist LeRoy Swartz—June 30, 1955

Machinist Helper Fred Theile—May 19, 1955
Machinist Helper Fred Theile—May 23, 1955
Machinist Helper Fred Theile—June 29, 1955
Machinist Helper Fred Theile—July 19, 1955

Carman Arthur Graves—April 19, 1955
Carman Arthur Graves—May 3, 1955

Carman Norman Bruff—July 5, 1955
Carman Norman Bruff—July 26, 1955

2. That accordingly Carrier be ordered to additionally compensate the aforesaid employees in the amount of four (4) hours' pay at the applicable rate of pay for each date specified after their names.

EMPLOYEES' STATEMENT OF FACTS: Machinist LeRoy Swartz, employed as such by the carrier, was assigned on the 7:00 A.M. to 3:00 P.M. shift with a work week of Monday through Friday, rest days Saturday and Sunday.

fill the position of a paid vacationing employe. Referee Morse upheld the carriers' interpretation concerning the application of Article 12(a) of the Vacation Agreement.

Thus was the issue settled. The interpretation of Referee Morse was, and is, just as binding as if the parties had negotiated directly and had written an interpretation without the aid of a referee.

"Subsequent agreements between the parties have continued to recognize the interpretations to the December 17, 1941 Vacation Agreement and while changes in that agreement have been made, the interpretations have been retained."

The contentions of the committee should be dismissed and the claim 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.

The claim herein primarily involves the issue of whether or not an employe is entitled to receive pay at time and one-half rate for the first shift he works in filling a vacationing employe's position, and time and one-half for the first shift he works upon return to his position.

The employes' position was that under A—Rule 13 the claimants are entitled to be compensated as claimed in Item 2 of said claim. A—Rule 13 reads as follows:

"Employes changed from one shift to another, will be paid over-time rates for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employes involved. Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Such assignments will be excepted from the requirements of this rule for penalty payments upon change of shift for shift changes included in the regular relief assignments."

The matters involved herein have heretofore been covered in many of our Awards, particularly Awards 2440, 2197, 2083, 2230 and 2243. The principles set forth in the above Awards control as to the claim in this case.

It would be redundant to again cover the same matters in this Award.

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 June, 1958.

DISSENT OF LABOR MEMBERS TO AWARD No. 2893

It is our considered opinion that the majority here have made the same error as the majority made in the awards upon which they rely—to which awards we filed dissents.

The erroneous findings result from the failure of the majority to recognize that where there is a conflict between the Vacation Agreement and the controlling Schedule Agreement the terms and conditions of the Schedule Agreement control until such time as they are modified or changed through the medium of negotiation as prescribed in Article 13 of the Vacation Agreement of December 17, 1941. (See Second Division Awards 1514, 1806, 1807.) It seems clear, therefore, that in the absence of any negotiated change A—Rule 13 of the Schedule Agreement should be enforced.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ E. W. Wiesner