Award No. 3127
Docket No. 2614
2-CNO&TP-MA-'59

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.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, THE

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement the Carrier improperly denied Machinists R. L. Waddle, S. S. Langley, J. R. Jones, C. E. Edge, L. T. Kitchens, C. E. Denham, H. E. Cox, H. L. Newell, J. O. Rast, J. B. Miller, G. W. Miller, and H. E. Gaines, and Machinist Helpers C. L. Longwith and C. B. Epperson the time and one-half rate for changing shifts on December 22, 1955 and the time and one-half rate for returning to their own shifts on January 3, 1956.

That accordingly the Carrier be ordered to properly apply the agreement and additionally compensate Machinists R. L. Waddle, S. S. Langley, J. R. Jones, C. E. Edge, L. T. Kitchens, C. E. Denham, H. E. Cox, H. L. Newell, J. O. Rast, J. B. Miller, G. W. Miller and H. E. Gaines, and Machinists Helpers C. L. Longwith and C. B. Epperson for four hours at the straight time rate for December 22, 1955 and for four hours at the straight time rate for January 3, 1956.

EMPLOYES' STATEMENT OF FACTS: All of the above named employes, hereinafter referred to as the claimants are employed by The Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the carrier, as machinists or machinist helpers, as designated, at the Citico Shops, Chattanooga, Tennessee.

Prior to December 22, 1955, nine machinists claimants, Waddle, Langley, Edge, Kitchens, Denham, Cox, Newell, Rast and Gaines, and two machinist helper claimants, Longwith and Epperson, were employed on the first shift while three of the machinists claimants, Jones, Miller and Miller were employed on the second shift.

In view of what we have herein held we come to the conclusion that claim is without merit."

Thus the claims which the association is here attempting to assert are not only not supported by the agreement here in evidence, but are not supported by the principles of prior decisions of the Second Division of the Adjustment Board dealing with similar situations. In these circumstances, the Board cannot do other than make a denial award. Under the principles of prior decisions of the Second Division, the claims simply cannot be sustained.

CONCLUSION

Carrier has shown that—

(a) There was no change of shifts within the meaning of Rule 13, as the employes were **not** changed by the management from one shift to another. Furthermore, seven of the claimants did **not** work on December 22, 1955—one of them having been on vacation. Two of them did not work on January 3, 1956. Moreover, none of them moved to a different shift on December 22, 1955.

(b) Rule 13 does **not** apply in situation where, as here, the force is adjusted and employes take new regular assignments, at their own request, and of their own volition, in the exercise of their seniority rights. The second sentence of the first paragraph makes this fact clear.

(c) Claim is not supported by any provision contained within the four corners of the effective agreement in evidence.

(d) Prior Board awards have denied similar claims and under the principles of these awards claims cannot be sustained.

Under the circumstances, the Board cannot reach any conclusion other than that the claims which the association is here attempting to assert are without any merit whatsoever and unsupported by the agreement in evidence, and, in such situation, make a denial award.

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.

Parties to said dispute were given due notice of hearing thereon.

In this docket fourteen claimants demand additional pay for the first shift worked following a force reduction bulletin with its attendant shuffling of employes, and likewise for the first shift after force was restored.

The organization depends on Rule 13 which states "Employes transferring from one shift to another will be paid overtime rates for the first * * * shift. This does not apply to * * * transfer at their own request."

The carrier cites, "Readjustment of Forces Memorandum" in part as follows:

> "When * * * necessary to adjust * * * forces * * * the positions to be made vacant will be abolished. When this is done the man affected will * * * have the right to roll only the junior man * * * on his own or any other shift * * * to which he may desire to go."

From the tabulation submitted by the carrier we note that each of the claimants did in fact change from the shift on which he was working on December 22 with the exception of H. E. Gaines and J. B. Miller who both apparently doubled on the first day they worked after December 22. It is also shown that each of the claimants received a bump and none could find any junior employe on their own shift whom they could displace.

This being so, we conclude that after the carrier initiated the abolishment of jobs by its bulletins, that the men displaced were in the position of being forced to transfer in order to keep working.

AWARD

Claim sustained for all claimants except H. E. Gaines and J. B. Miller whose claims are also sustained if upon recheck it is established that they were in the same status as the other claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1959.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3127

The conclusion of the majority in Award No. 3127 can only be attributed to a complete lack of understanding, or to a total disregard of the rules of the applicable agreement, the facts in the dispute as contained in the record, and prior awards of this Division, one of which involved the same rule of the same agreement as involved herein.

The dispute had its genesis in a reduction of force at Chattanooga, Tennessee, effective with close of work on Thursday, December 22, 1955. There was no dispute between the parties that the force reduction effective December 22, 1955, the resulting readjustment of forces, and the restoration of forces effective January 3, 1956, were effected in accordance with Rule 26 and the Readjustment of Forces Memorandum Agreement.

As a result of the force reduction, effective with the close of work on December 22, 1955, the fourteen claimants took new positions and assignments at their own request, for their own benefit, and in the voluntary exercise of their seniority rights, as provided for in the Readjustment of Forces Memorandum Agreement.

Rule 13, upon which the claim was based, provides in part:

> "Employes transferring from one shift to another will be paid overtme rates for the first day or night of the new shift. This does not apply to employes who transfer at their own request."

There was no change of shifts within the meaning of this rule. Each of the claimants, at his own request, of his own volition, and in the exercise of his seniority rights took a new position and assignment. The claimants were not transferred from one shift to another at the direction of the management.

In Second Division Award No. 2615, involving the same rule of the same agreement as involved herein, we said:

> "* * * Here, following abolishment and rebulletining of positions, the seniority rules and not the discretion of management is brought into play. Whether the employes took affirmative steps to place themselves in the new positions or not, the placement was effected through the operation of the seniority rules. As we held in Award No. 1816, the transfer does not apply in such instances, and we so hold here."

Award No. 2615 correctely followed the same principle as had previously been followed in a long line of awards by this Division with different referees participating, which awards were cited on behalf of the Carrier. The same principle should have been adhered to in the instant dispute, and the claim should have been denied.

As further evidence of the apparent lack of understanding on the part of the majority or disregard of the facts as established by the record, we point out that the claim as submitted to the Division is that the Carrier improperly denied the fourteen claimants the time and one-half rate for changing shifts on December 22, 1955, and the time and one-half rate for returning to their own shifts on January 3, 1956. The record clearly established that on December 22, 1955, seven of the claimants worked the same shift to which they were assigned before the force was readjusted, and seven of them did not work at all on that day, one actually being on vacation and another observing one of his rest days. On January 3, 1956, two of the fourteen claimants did not work. Notwithstanding this record, the majority says that the claimants all changed shifts on December 22, 1955, and sustained the claim as submitted, with the slight reservation as stated in the award.

The entire award is in error, and we dissent.

P. C. Carter

D. S. Dugan

D. H. Hicks

R. P. Johnson

M. E. Somerlott