

Award No. 3128
Docket No. 2650
2-GM&O-CM-'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. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**GULF, MOBILE AND OHIO RAILROAD COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable agreement the Carrier improperly paid Carman J. W. Poythress and Carman Helper C. A. McKee for changing from one shift to another on May 28, 1956.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Carman and Carman Helper four (4) hours each at the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: J. W. Poythress and C. A. McKee, hereinafter referred to as the claimants, are employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, at Meridian, Mississippi.

Claimant Poythress held a regular assignment on 3:00 P. M. to 11:00 P. M. shift up to and including May 27, 1956. On this date carrier elected to abolish the 7:00 A. M. to 3:00 P. M. car inspector's position held by N. M. Brown and Brown in turn displaced claimant causing said claimant to have to move to the 7:00 A. M. to 3:30 P. M. shift on the repair track on May 28, 1956, there being no carmen's positions on the 3:00 P. M. to 11:00 P. M. shift held by employes junior to him.

Claimant McKee held a regular assignment on the repair track as helper, 7:00 A. M. to 3:30 P. M., 30 minutes out for lunch, up to and including May 27, 1956. On this date carrier elected to abolish relief oiler's job held by J. S. Powers. Powers elected to roll claimant who was the junior helper on the first shift and as a result was forced to move to the 3:00 P. M. to 11:00 P. M. shift to take care of a vacancy on that shift.

Carrier insists that Rule 13 of the current agreement, as amended, does not apply, and was never intended to apply, where positions are abolished and the employe thus displaced may exercise their contractual seniority rights to prefer and select for themselves the most desirable position held by a junior, if capable.

The said Rule 13 was intended to and does apply only where and when circumstances of a temporary nature causes carrier to require a regularly assigned employe to work on a different shift. Obviously, such an action would discommode an employe, and the purpose of this rule was to discourage such a procedure.

In its Award No. 1276 this Board denied claims that rested upon a contract provision which was identical with the first sentence of the Rule 13 hereinbefore quoted, and involved the same question as that here at issue.

Also, in its Awards Nos. 2067, 2103, and 2224, this Board denied claims which were similar in principle to those which the employes propose to submit in this case.

Carrier quotes from the findings of this Board in Award No. 2224, and submits the proposition that the statements made therein are correct. The Board said, in part:

“. . . The purpose of the rule is to restrain the indiscriminate moving of employes from one shift to another by penalizing the carrier for so doing. But a displacement is an exercise of seniority and not a change of shifts which the rule was intended to restrain.

“The right to displace is contractual. It does not involve any discretion on the part of the carrier. The contention that carrier should be penalized for complying with express provisions of the agreement is not contemplated by the rule.”

Carrier submits that the claims listed by the employes in their “Notification of intention to file ex parte submission” are without merit, and should be denied, and prays that this Board will so decide.

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.

The question to be determined here is whether the abolishment and re-creation of jobs with the subsequent rolling of and by the affected employes, entitles the claimants to additional pay, under the terms of Rule 13, which reads in part:

“Employes changed from one shift to another will be paid overtime for the first shift * * *. This will not apply when shifts are exchanged at the request of the employes involved.”

Claimant Paythress was rolled by Brown who could have stayed on his own first shift. Claimant McKee was rolled by Powers who could have remained on the changed relief job. Both Brown and Powers, in effect, requested an unnecessary change of shifts and consequently they have not claimed that they were changed from one shift to another. However, Paythress and McKee both found no one junior to themselves on their own shift. In order to keep working they did not request but were forced to seek out a junior man on another shift.

AWARD

The claim is sustained.

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.