

Award No. 3162
Docket No. 3018
2-DM&IR-BM-'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. 71, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Boilermakers)**

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier unjustly deprived Boilermakers Finus T. Smith and Fred Sanders and Boilermaker Helpers Marvin Bissel and Albert Papez of the right to work on their regular first shift assignment from 7:00 A. M. to 3:30 P. M., Wednesday, March 6, 1957, at Two Harbors, Minnesota.

2. That accordingly the Carrier be ordered to reimburse these employes at their regular rate of pay in the amount of eight (8) hours from 7:00 A. M. to 3:30 P. M. on the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Boilermakers Finus T. Smith and Fred Sanders and Boilermaker Helpers Marvin Bissel and Albert Papez, hereinafter referred to as the claimants, are regularly employed by the Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as the carrier, at the Two Harbors Shops.

The claimants were regularly assigned to the day shift 7:00 A. M. to 3:30 P. M., Mondays through Fridays, in the locomotive shop. The claimants worked their regular assignment on Monday and Tuesday, March 4 and 5. On Monday, March 4, the foreman ordered the claimants not to report for their regular shift on Wednesday, March 6, but to report for duty on this day at 3:30 P. M., since the carrier was establishing a second shift in order to complete repairs to locomotive No. 229 as soon as possible. After the repairs to locomotive No. 229 were completed, the claimants were transferred back to their regular assignment at the Two Harbors Shop on the first shift, 7:00 A. M. to 3:30 P. M.

The second is that in the absence of any rules in the agreement precluding it from doing so the carrier has an absolute right to abolish positions and rearrange the work thereof when in the interests of efficiency and economy its operations so require.

When the rights of the parties are considered in the light of these principles it will become clear beyond question that the carrier has not relinquished its basic managerial right to abolish positions when they are no longer needed, and that there is no agreement provision prohibiting the abolishment of the claimants' positions as was done in this case.

Insofar as the rights of the claimants are concerned your Board has already said that employees "cannot rightfully contend they were denied the right to work an assignment they no longer held," and surely there can be no sound basis for a claim that employees have a right to work an assignment that no longer exists.

The carrier respectfully requests that the Board confirm the decisions rendered in Awards 2340 and 2460 and deny the claim submitted in this docket.

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.

Claim is advanced here that carrier unjustly deprived claimants of their right to work their regular first shift assignment. It is urged that the carrier made this move in violation of Rule 8 which provides:

"When it becomes necessary for employes to work overtime, they will not be laid off during the regular working hours to equalize the time."

From the facts shown, it is clear that the number of employes on duty remained constant and that there was no reduction of forces as controlled by Rule 23, which requires bulletin notice as a prerequisite.

Rule 8 has been tested in two other cases before this Division (Awards No. 2340 and 2460) which contained comparable fact stipulations. Here the claimants' regular assignments had been terminated and it has not been shown that the termination was for the purpose of equalizing overtime.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.