

Award No. 3798
Docket No. 3218
2-CRI&P-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman Helper S. F. Claflin was not properly compensated at the applicable rate and one-half when he was required to change shift from the 12 Midnight — 8 A. M. shift to the 8 A. M. — 4 P. M. shift on December 10, 1957. That accordingly the Carrier be ordered to additionally compensate Helper Claflin in the amount of four (4) hours for the first shift assignment, 8 A. M. — 4 P. M., Tuesday, December 10, 1957.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a repair shop at Armourdale, Kansas, where approximately 175 carmen and helpers are employed. Carman Helper Claflin, hereafter referred to as the claimant, is regularly employed with a seniority date of October 23, 1952.

The claimant was regularly assigned as a car oiler in the train yards, with assigned hours 12:00 Midnight — 8:00 A. M., Monday through Friday. On December 9, 1957 a bulletin was posted abolishing the claimant's assignment. The claimant's seniority did not entitle him to remain on the 12:00 Midnight to 8:00 A. M. shift, with the result that claimant was required to report to the repair track, with assigned hours 8:00 A. M. to 12:00 Noon, and 12:30 P. M. to 4:30 P. M. He reported at 8:00 A. M. on December 10 to Car Foreman Clawson, who assigned him to fill the vacancy of a bulletined job pending the assignment. The claimant did not bid on the bulletined job but was assigned as a relief car oiler on December 16, 1957, with assigned hours 8:00 A. M. to 4:30 P. M., Monday and Tuesday, on the repair track, and 4:00 P. M. to 12:00 Midnight, Wednesday through Friday, in the train yard. The claimant was not laid off in a reduction in force, as stated by the carrier in their letter dated February 4, 1958.

This dispute has been handled up to and with the highest officer so designated by the carrier to hear such appeals, with the result that said officer has declined to adjust it.

The agreement effective October 16, 1948 and subsequently amended is controlling.

any kind on any shift on which he could exercise his seniority, but he, in effect being then a furloughed employe, was used on the tip track filling a temporary vacancy. Furthermore, this was not a change in shifts because he had no position from which he was changing as it had been abolished, and no assigned position to which he could return, but rather he was in the category of being used as an available furloughed employe.

As a matter of fact, the last paragraph of Rule 7 of the applicable agreement spells out how a furloughed employe will be compensated when used to fill a temporary vacancy. That part of Rule 7 reads:

"If a furloughed man is used at his seniority point to fill a temporary vacancy as a result of a regular assigned employe laying off, it will not be considered a call under this rule and he will be paid a minimum of eight (8) hours."

Your Board will note the claimant was paid a minimum of 8 hours for filling a temporary vacancy while under bulletin when no other employe was available to fill the temporary vacancy.

On the basis of the facts in this case, the claim has no merit and we respectfully request declination thereof.

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 waived right of appearance at hearing thereon.

The employes maintain the Rule 9 was not complied with in this case. Rule 9 provides that "employes changed from one shift to another will be paid overtime rate for the first shift of each change."

Claimant's assignment as a car oiler at Armourdale, Kansas, 12 Midnight to 8 A. M., Monday through Friday, was abolished December 9, 1957. His seniority did not enable him to remain on that shift and, effective December 10, he was assigned to fill the vacancy of a bulletined job pending its assignment. Claimant did not bid the bulletined job but filled the vacancy until December 16, 1957 when he was assigned as a relief car oiler.

The Carrier contends that when Claimant's assignment was abolished on December 9, he became, in effect, a furloughed employe; and that by assigning him to fill a temporary vacancy on December 10, a change from one shift to another did not take place because his former position has been abolished. The language of Rule 9 is plain and should be given its ordinary meaning. This rule specifies three exceptions to which the overtime requirement is not applicable, but none of them is applicable to the factual situation presented.

In removing claimant from the 12 Midnight — 8 A. M. assignment as a car oiler on December 9 and assigning him to a temporary vacancy commencing

ing December 10, we think the Carrier changed him from one shift to another within the meaning of Rule 9.

Under the circumstances shown of record, the contention that Claimant was taken from a furloughed status involves a strained construction of the applicable rule which is not warranted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1961.