

Award No. 4063
Docket No. 3788
2-CMStP&P-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O.
(Carmen)

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carmen, Theodore Leonard, Bert Roff, Steve Lazor, Alvin Boe, Clarence Weidert, John H. Ryan, Loren Gustafson, and Coach Cleaners, Joe Reilling, Joe Savage, Andrew Hansen, Frank Pytlak, Alvin Nelson, Eldon Gossett, Joe Lopata, were improperly compensated for changing from one shift to another on July 11, 1959.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Claimants in the amount of four (4) hours pay at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: Carmen. Theodore Leonard, Bert Roff, Steve Lazor, Alvin Boe, Clarence Weidert, John H. Ryan, Loren Gustafson, and Coach Cleaners. Joe Reilling, Joe Savage, Andrew Hansen, Frank Pytlak, Eldon Gossett, Joe Lapata and Alvin Nelson, hereinafter referred to as the claimants are employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier at Minneapolis, Minnesota.

The claimants hold seniority on the January 1, 1959 roster of carmen and coach cleaners at Minneapolis, Minnesota. The carrier made the election to reduce the forces at Minneapolis Coach Yard by notice dated July 3, 1959. Claimants, Leonard Roff and Lazor, assigned to the 3:00 P. M. to 11:00 P. M. shift were involved, and as a result of the carrier's action in electing to reduce the forces of carmen, they were forced to work on the 6:00 P. M. to 2:30 A. M. shift. Carman, Alvin Boe, assigned to 11:00 P. M. to 7:00 A. M. shift, was forced on 7:00 A. M. to 3:30 P. M. shift. Carman Clarence Weidert, assigned 3:00 P. M. to 11:00 P. M. shift, was forced on 11:00 P. M. to 7:00 A. M. shift. Carman John H. Ryan, assigned 3:00 P. M. to 11:00 P. M. shift, was forced on 7:00 A. M. to 3:00 P. M. shift. Carman Loren Gustafson, assigned 3:00 P. M. to 11:00 P. M. shift, was forced on 7:00 A. M. to 3:30 P. M. shift. Coach Cleaners

Your attention is also directed to the following awards of this Division: 1276, 2103, 2224, 2615, 3087 and many others concerning similar cases of this nature.

The distinguishing feature in the instant case is the fact, that here, as in the submission subject of Award 1816 and other above-mentioned awards, the positions initially occupied by claimants were abolished. This is not just a case of temporary transfer between existing positions and shifts made as a convenience to the carrier, and as specifically stated in Rule 13 (a): "This rule will not apply when shifts are changed in exercise of seniority or at employee's own request". It is plainly evident that the claimants did exercise seniority and did so at their own request.

In light of the above it is the position of the carrier, clearly supported by previous rulings of your Board, that the contention and claims of the employees are completely without merit or basis under the applicable rule of the governing agreement and we respectfully request the claim be 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 employees 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.

In this case carrier decided to reduce forces at its Minneapolis coach yard as of end of shifts on July 10, 1959. This reduction was effected in such a manner that the number of shifts was reduced from three to two. Old jobs were abolished, and new ones were created for which bids were invited. All claimant employees except one did in fact bid for the vacancies and were assigned thereto by carrier. The new assignments involved changes in shifts for said employees.

Rule 27(a) says in substance that, when carrier reduces forces at a given point, layoffs are to be made in inverse order of seniority. Nothing in the Rule prohibits carrier from making the reduction in the manner it did; nor in fact does petitioner assert that this Rule as such was violated.

Petitioner does aver that carrier violated Rule 13(a), in that its method of reducing forces compelled the men to change shifts. In other words, says, petitioner, the changes in shifts were made at the direction of carrier and not at the request of the employees. Therefore, in the view of petitioner, carrier should have paid the time-and-half rate for the first shifts worked by said employees.

Carrier erects two defenses: (1) Rule 13(a) does not apply because there was no change of shifts within the proper meaning and contemplation of the Rule. (2) Even if a change of shifts can be considered to have occurred here, the change resulted from the exercise of seniority by claimants.

The Division is forced to hold with carrier, and on both of the above counts. As to the first, Rule 13(a) and the facts of the instant case are so

similar to those in the cases decided by denial Awards 1816, 2067, 2224, and 4061 as to compel the conclusion that the first sentence of Rule 13 (a) which contains the punitive overtime-pay provision, was not meant to apply to moves from one shift to another where the former shift ceases to exist. Here the shift and positions originally occupied by claimants ceased to exist. Claimants were not moved within the contemplation of said sentence.

Carrier's second contention must also be upheld. Even if a change of shifts may be said to have happened in the instant case, it involved an exercise of seniority by claimants. It is true that the original reason for said moves was carrier's lawful decision to reduce forces, plus carrier's lawful decision as to method of reduction. Absent these two decisions, claimant moves would not have occurred. It is also true that, given said decisions, claimants had only two alternatives — loss of employment and move to another shift. But the hard facts remain that (1) claimants did voluntarily use their seniority rights in making the moves; and (2) there is no qualification or exception to the language contained thereon in the third sentence of Rule 13(a). Award 3853.

In the light of all the above, these claims cannot be sustained.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 21st day of September, 1962.

DISSENT OF LABOR MEMBERS TO AWARD 4063

The referee states in his findings that "The Division is forced to hold with the carrier" and in support of such holding cites awards which are inapplicable. The applicable awards, all of which were rendered on disputes arising under the same agreement on the present property, and copies of which were given to the referee, are Awards 1422, 1959 and 2488. Rule 13(a) of the controlling agreement was properly applied in the afore-mentioned awards and sustains the claim in the current case.

**C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B. Zink**