Award No. 4100

Docket No. 3890

2-GTW-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 92,
RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.—C. I. O.
(CARMEN)**

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

Carman Carl Kinney is entitled to be additionally compensated at overtime rates, under the current agreement, for having been changed from the first shift and the repair track assignment, to the second shift and the inspection yard assignment, effective November 19, 1959, and that the Carrier be required to additionally compensate this employe.

EMPLOYES' STATEMENT OF FACTS: Carman Carl Kinney, hereinafter referred to as the claimant, was regularly employed as a car repairer on the repair track in the Bristol Yard, Flint, Michigan, with assigned hours 8:00 A.M. to 4:30 P.M. with a thirty (30) minute lunch period.

Upon instructions of Locomotive and Car Foreman S. G. Grout, the claimant was changed from his first shift assignment with more favorable hours of service and rest days, to the second shift and less desirable hours of service and rest days, effective November 19, 1959, for which service on this new shift he claimed overtime rates, but payment of which to this date has been declined. Agreement dated at Detroit, Michigan, July 26th, 1950 and effective as of September 1st, 1949, is controlling.

POSITION OF EMPLOYES: It is submitted that since the claimant was the junior carman in service on November 19, 1959, the carrier elected to transfer him to the position left vacant after the furloughing of the car inspector in the train yard, which required him to change shifts.

It is the contention, therefore, that under the explicit terms of Rule 10 of the controlling agreement, the pertinent part of which reads:

"Employes transferred from one shift to another at the direction of Management will be paid overtime rate for the first shift worked on the shift to which transferred and if he works more than one shift

3. The overtime rate claimed is not supported either by the literal wording of Rule 10 or by past practice on the property.

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 Claimant, Carl Kinney, was employed as a Car Repairman by the Carrier at Flint, Michigan. His regular work schedule was from 8:00 A. M. to 4:30 P. M., Monday through Friday, with Saturday and Sunday as rest days. On November 11, 1959, the position of a Relief Car Inspector was bulletined as a permanent vacancy. The regular work schedule of said position is from 12:00 Midnight to 8:00 A. M., Thursday and Friday, 8:00 A. M. to 4:00 P. M., Saturday, and 12:00 Midnight, to 8:00 A. M., Sunday and Monday, with Tuesday and Wednesday as rest days. No applications were received for the bulletined position within the specified time limit. The Carrier then assigned the Claimant thereto, effective as of November 19, 1959.

Since he was required to change shifts as a result of his new assignment, the Claimant requested overtime pay for the first shift worked by him as a Relief Car Inspector. The Carrier denied the claim which is now before us for decision.

1. The Claimant's request for overtime pay is based on Rule 10 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "Employes tranferred from one shift to another at the direction of Management will be paid overtime rate for the first shift worked on the shift to which transferred and if he works more than one shift on the shift to which transferred shall be paid at overtime rate for the first shift worked after returning to his regular assignment."

The Carrier contends that Rule 10 requires overtime payment only if shift changes occur in the course of temporary transfers in which the transferred employe returns to his regular assignment. We do not so construe Rule 10. A careful examination thereof has convinced us that the Rule prescribes two separate circumstances for overtime payment. The first half-sentence clearly provides for overtime pay in any instance in which an employe is transferred from one shift to another at the direction of management, irrespective of whether the transfer is temporary or permanent. The second half-sentence provides for another overtime payment in the event an employe is returned to his regular assignment. This provision obviously applies only to temporary and not to permanent transfers made at the direction of Management. The two occasions requiring overtime payment under Rule 10 are independent of each other and refer to two distinctly different situations.

It is beyond dispute that the Claimant was transferred from one shift to another at the direction of the Carrier on November 19, 1959. Accordingly, he is entitled to the overtime pay claimed by him.

2. In further support of its position, the Carrier relies on our Award 2067 (Docket No. 1940) in which we construed a substantially similar Rule included in a different labor agreement. A review of that Award discloses, however, that the factual situation presented to us in Docket No. 1940 is distinguishable from the one now before us. Specifically, the Carrier involved in the previous case stated that "the employes in the case . . . before you were not transferred from one shift to another at the direction of management, but simply exercised their seniority to displace junior employes . . ." In the case at hand, it is undisputed that Claimant was transferred from one shift to another at the direction of the Carrier. But even if our prior Award may be conceived as expressing a different opinion than the one outlined above, we no longer adhere thereto.

3. The Carrier also argues that it has been the practice in the past to pay the overtime rate under Rule 10 only in cases of transfers of a temporary nature. The Claimant has strenuously denied the existence of such a practice. Our attention has not been called by the Carrier to any specific instances from which we could reasonably conclude the existence of a long-continued, consistent, and mutually accepted practice as claimed by it. Past practice to take on the authority of demonstrating the existence of a binding rule to govern the rights of the parties to a labor agreement must more adequately exhibit mutual understanding than the record here reveals. See: Award 4097 of the Second Division.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1962.