

Award No. 4396

Docket No. 4218

2-GM&O-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

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

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carman Mose Beason was improperly held out of service while junior Carman was used December 24, 1960, in restoration of forces.

2. That accordingly, the Carrier be ordered to compensate Mose Beason in the amount of eight (8) hours at the time and one-half rate of pay for December 24, 1960, and eight (8) hours at the straight time rate for December 25, 1960.

EMPLOYEES' STATEMENT OF FACTS: Mose Beason, hereinafter referred to as the claimant, is employed as a carman at Laurel, Miss., by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier. His seniority date is May 5, 1953. He is regularly assigned to the second shift 3:00 P. M. to 11:00 P. M.

On date of December 19, 1960, a bulletin was posted notifying all car department employees at Laurel, Miss., that the shops and yards would be closed down at the completion of the days work December 23, 1960 until 3:00 P. M. December 27, 1960.

December 24, 1960, Carman H. J. Tice was used on the first shift 7:00 A. M. to 2:00 P. M. He was paid at the overtime rate for this service. His seniority date is November 7, 1960.

December 24, 1960 fell on Saturday. Normally there is a regular assignment on the first shift, 7:00 A. M. to 3:00 P. M. Tuesday through Saturday to cover this regular train movement, however, with the furlough all positions were furloughed.

Inasmuch as the normal regular assignment was Tuesday through Saturday, had claimant been properly assigned by carrier in the first instance,

to holding Car Inspector Tice on duty to work overtime to protect the servicing of a train arriving late, is not in accord with the agreement or with past practice through the years. It has always been the practice to hold train yard employes on duty after the expiration of their regular working hours on overtime to service a late-arriving train or to handle any emergency that might arise.

Carman Tice was properly used and properly paid. There is no rule or justification to additionally compensate Carman Mose Beason for eight hours on December 24, at time and one-half rates and December 25, at straight time rates.

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.

This dispute arose when Carrier held over a carman, who regularly worked on the 11:00 P. M. to 7:00 A. M. shift, to perform work after the normal end of his shift and after the Carrier had, five days previously, posted a shop bulletin announcing its intention of closing down the shop "after the completion of day's work December 23, 1960, until 3:00 P. M. December 27, 1960."

The train schedule called for Train #40 to arrive Laurel, Mississippi at 4:00 A. M. on December 24, 1960, however, account unforeseeable delay, its arrival was delayed until 6:50 A. M. same day. Carman H. J. Tice, prior to finishing his day's work for December 23, 1960 was instructed to remain at work and to complete the servicing of Train #40.

It is undisputed that Carman Tice was a junior man to Carman Mose Beason.

The facts presented show that Train #40 arrived late account unforeseeable delay, therefore Rule #7 of the Agreement was applicable rather than Rule #29.

AWARD

Claim denied in accordance with last paragraph of findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.