

Award No. 4561

Docket No. 4268

2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Article V of the August 21, 1954 Agreement, and accordingly claim should be allowed as presented.

2. That under the current agreement the Spokane Carmen named below were denied proper payment when they were directed to change shifts as set out below.

First shift employees assigned to second shift:

C. Miller	Chief Car Inspector
H. Burger	Carman
C. Wicksire	"
J. Herman	"
O. Richards	"
J. Hartle	"
C. Burrell	"
J. Ebel	"
H. Davey	"
A. Hamon	Car Oiler and Brasser
J. Fallon	"
H. Hargis	"

First shift employees assigned to third shift:

E. Artman	Carman
R. Ness	"
A. Kelling, Sr.	"
J. Trent	"
W. Putnam	"
R. Emeret	"
M. Schulz	"
A. Bertholf	"
W. Evans	"

C. Swenson
K. Warner
R. Reynolds

Car Oiler and Brasser
“
Carman

3. That accordingly the Carrier be ordered to additionally compensate the aforementioned employees in the amount of four (4) hours pay each.

EMPLOYEES' STATEMENT OF FACTS: On September 28, 1961, a bulletin was posted reducing forces effective October 1, 1960, in the car department of the Great Northern Railway Company, hereinafter referred to as the carrier, at Spokane, Washington.

A notice was also posted effective at the close of the shift on October 1, 1960 showing the positions to be abolished because of the reduction in force.

On September 30, 1960 bulletins were posted showing the rearrangement of the remaining forces as to their job assignment. These assignments were at the direction of management.

A claim was appealed to the general foreman, P. L. Sowa, by the local chairman, under date of December 12, 1960.

General Foreman Sowa rejected the claim on December 19, 1960 without stating reason thereof.

Claim was subsequently progressed and handled with all officers of the carrier designated to handle such claims, including the highest designated officer of the carrier, all of whom declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier violated the terms of Article V, paragraph (a) of the August 21, 1954 Agreement reading:

“1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

‘(a) All claims or grievances must be presented in writing by or on behalf of the employees involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance, (The employees or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.’” (Emphasis ours)

when General Foreman P. L. Sowa failed to notify the local chairman of his reason for disallowance of the claim. The claim was filed with the general foreman by Local Chairman Vanderberg in writing under date of December 12, 1960. The general foreman rejected the claim submitted by the local chairman, but that he failed to state a reason thereof.

"It is our duty to examine previous awards and where possible to harmonize the instant case with the best thought of preceding cases. We should not lightly disregard previous awards because that would neglect the purpose of our being."

The organization has presented no evidence or sound arguments whatsoever to establish that the previous awards of this board on the issue involved in this case, should not be followed.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. Rule 18(a) applies only to temporary transfers at the direction of management where the employe retains a right to return to his regular assignment, and not to permanent transfers made as a result of the exercise of seniority.

2. The claimants in this case were transferred as a result of the mandatory exercise of seniority under Rule 5(a).

3. Awards 2067, 2103 and 3846 of this board which involve parties, rules and facts identical to those in the instant case, denied the organization's contentions concerning Rule 18(a).

4. This board has held that sound and logical awards such as those cited above, should be followed.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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 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.

On September 28, 1960, Claimants held regular assignments on the first shift in the Car Department of Carrier's Hillyard Shops, near Spokane, Washington. On that date, the Carrier posted a notice reducing the forces at Hillyard, including the positions of Claimants. It also posted a notice furloughing a number of Carmen and other employes at Hillyard. Notices were to be effective at the close of shift, October 1st.

None of the Claimants were among the furloughed employes, and they were given assignments on the second and third shifts.

Rule 18(a) of the controlling agreement reads as follows:

"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

on the shift to which transferred will be paid at overtime rate for the first shift worked after returning to his regular assignment. Such overtime payment shall not apply to transfers made as a result of the exercise of seniority."

Claimants are seeking the overtime rate for October 2, 1960, the first shift on their new assignments.

At the outset, Claimants seek the allowance of the claim as presented, alleging a violation of Article V of the August 21, 1954 National Agreement.

Article V, 1., (a) reads in part as follows:

"(a) * * *. Should any claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance shall be allowed as presented, * * *." (Emphasis ours.)

Claimants rely upon the letter of the General Foreman Sowa, attached to their submission as Ex. "D", and point out that it fails to give any reason for the declination of the claim. However, this was the second stage in the processing of the claim. Carrier submits a letter (Ex.CR-1) predating that of Mr. Sowa, written by the Car foreman to the Local Chairman, declining the claim and assigning a sufficient reason to meet the objection raised by Claimants. The correspondence attached to this record shows that the organization was timely and adequately advised of the reasons for the rejection of the claims.

Returning to the merits of the claim, the record discloses that after the notices were posted, the claimants and other employes were solicited to determine if they wished to exercise seniority into the jobs of junior furloughed employes. All of the Claimants, but six, chose an assignment, and these six were assigned according to seniority to remaining positions on the second and third shifts.

There is no question, but that these Claimants were retained in service through the exercise of their seniority and not through such a transfer at the direction of management as is contemplated by the overtime provision of Rule 18(a). It is argued that in such a situation, the exercise of seniority is involuntary on the part of the employe, and therefore is at the direction of management within the Rule. It is true that there is a certain element of involuntariness in this situation, but it is a voluntary act on the part of the employe when he takes advantage of his senior position to take what has become available rather than cease to work. The management is always involved in administering the detail of any change in shift, even when seniority is the factor. But the needs and direction of management, for which the overtime rate must be paid are not present in the instant dispute.

AWARD

Claim 1: Denied.

Claim 2: Overruled.

Claim 3: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.