

Award No. 5045

Docket No. 4751

2-NYC-FT-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Federated Trades)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That the Carrier violated the provisions of the current agreement specifically Rule 13, when they refused to compensate Collinwood Diesel Locomotive Shop Craft Employees, the overtime rate of pay for change of shift.

That the following claimants be compensated four (4) hours each at the prevailing rate, account of being required to return to their former shift:

Name	Craft	Now Working on Shift	Restored to Shift	Date Transferred
R. E. Newman	Boil.	1st	2nd	3- 1-63
P. Zak	"	3rd	1st	12- 4-62
E. F. Park	"	3rd	1st	12-11-62
W. DePuye	"	2nd	1st	12-11-62
K. Temson	"	2nd	1st	12-17-62
R. L. Paulotte	"	2nd	1st	1-17-63
C. E. Braden	"	3rd	1st	12-11-62
J. E. Mickovic	"	2nd	1st	1- 1-63
R. W. Kohler	"	3rd	1st	12-19-62
M. C. Shuman	"	3rd	1st	2- 1-63
U. F. Fox	"	2nd	1st	3- 1-63
R. J. Wolf	"	2nd	1st	3-27-63
E. D. Tomko	"	3rd	1st	12-17-62
A. M. Salata	"	3rd	1st	3- 6-63
H. Gruel	"	2nd	1st	3- 6-63
R. P. Ryan	"	3rd	2nd	3-21-63
C. J. Green	"	2nd	1st	12-17-63
J. C. Harvath	"	2nd	1st	3-28-63
W. S. Dugan	"	3rd	2nd	3-18-63
G. A. Popovich	"	3rd	2nd	4-22-63

R. Gazso	Elect.	3rd	1st	2-25-63
J. J. Vallo	"	3rd	1st	2- 6-63
J. R. Plunkett	Mach.	3rd	2nd	2- 4-63
J. Haller	"	3rd	1st	3-25-63
C. R. Hermilla	"	3rd	1st	12-17-62
A. Kappella	"	3rd	1st	12-17-62
R. Ward	"	3rd	1st	12-17-62
W. Graybeal	"	3rd	1st	3- 4-63
D. Stefanik	"	3rd	1st	2-25-63
S. Curtis	"	3rd	1st	3-18-63
W. Stapleton	"	3rd	1st	2- 4-63
D. Barringer	"	3rd	1st	1-22-63
John Homa	"	3rd	1st	3-18-63
P. Csaky	"	3rd	1st	3- 4-63
J. Guenther	"	2nd	1st	3-12-63
C. Meyer	"	2nd	1st	3-12-63
G. Suto	"	2nd	1st	3-11-62
J. Klump	"	2nd	1st	12-31-62
N. Klim	S.M.W.	3rd	1st	2-11-63
F. Christopher	"	3rd	1st	3-18-63
L. Moriarity	"	3rd	1st	2-27-63
R. DeRubeis	"	3rd	1st	2-15-63
L. Bohm	"	2nd	1st	12-18-62
L. King	"	3rd	1st	3-11-63
D. Urquhart	"	3rd	1st	1-21-63
J. Reitz	"	3rd	1st	1-13-63
D. Desciscio	"	3rd	1st	3-26-63
C. Overbaugh	"	2nd	1st	2-18-63
J. Bozosky	"	3rd	1st	1-21-63
M. Paolucci	"	2nd	1st	2-26-63
A. Scharf, Jr.	"	3rd	2nd	3-11-63
K. J. Borling	"	1st	2nd	3- 1-63

EMPLOYEES' STATEMENT OF FACTS: A bulletin was posted on November 9, 1962, abolishing shop craft employees' positions at the Collingwood Diesel Locomotive Shop. The above mentioned shop craft employees were affected and holding sufficient seniority, exercised their seniority rights and displaced junior employees on various shifts, being unable to displace junior employees on their respective shifts.

Effective December 1, 1962, through March 1, 1963, shop forces were restored and the claimants mentioned in the employees' claim, on various dates shown, were restored to their former positions by bulletin.

The claimants claiming overtime rate of pay for change of shift under Rule 13, were denied.

The agreement effective July 16, 1946, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The working agreement between System Federation No. 103 and the New York Central Railroad is controlling, Rule 13 reads in part as follows:

and therefore is at the direction of management within the Rule. It is true that there is a certain amount of involuntariness in this situation, but it is a voluntary act on the part of the employee 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."

* * * * *

The foregoing awards are of recent origin and are representative of the latest thinking regarding interpretations of Rule 13. Some practices on this property have their origin in early awards. However, this practice was never recognized in moves between Collinwood Diesel Locomotive Shops and Collinwood Diesel Terminal.

CONCLUSION: Rule 13 has not been violated, as the employees contend. Carrier has shown that it never has been the practice at Collinwood to allow penalty payments for a change of shift whenever the two facilities are involved. The changes herein are a result of the exercise of seniority by the employees and Rule 13 does not apply, as has been shown.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 13, entitled Overtime Changing Shifts, provides as follows:

"(a) Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working 2 or more shifts on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

Rule 27, entitled Reduction of Forces, contains these provisions:

"(c) In case of a reduction in force or the abolition of a position, employees affected shall be allowed to exercise their seniority in displacing any junior employees at their home points. * * *"

"(e) In the restoration of forces, employees will be restored to service in accordance with their seniority if available within a reasonable time and shall be returned to their former positions if possible providing they have not in the meantime exercised their seniority rights on permanent positions under Rule 18. The local committee will be furnished with a list of employees to be restored to service."

The Claimants' positions at the Collinwood Diesel Locomotive Shop were abolished, and they exercised their seniority rights under Rule 27 (c) by bumping junior employees on other shifts at the Diesel Terminal, within the same seniority district. Since the latter were not new jobs or vacancies the Rule 18 exception was not applicable. In restoration of forces at the Locomotive Shop it was therefore mandatory under Rule 27 for the Carrier to return them to their former positions, if possible, and several weeks later it proceeded to do so.

This claim is for the benefits of Rule 13 because in resuming their old positions they again changed shifts. But they did not claim those benefits for the initial change of shifts on exercise of seniority when their original jobs were abolished, and the Employees apparently have not in the past made such claims, although under somewhat different prior rules, employees bumped because of job abolishments claimed and were granted Rule 13 benefits. Awards 466 and 467.

It seems clear that when upon the abolishment of their positions, the Claimants bid positions on other shifts, the change of shifts was at their request, with the knowledge that it involved also the reverse change upon restoration of forces. The two changes of shift are so interrelated that the one request necessarily caused them both.

Both changes of shift are for the benefit of the employee,—first in affording, if seniority permits, another position when one is abolished, even if a change of shift is involved; and second, in affording, if possible, a return to the former position on restoration of forces.

Under these circumstances, it is not, therefore, within the intent of Rule 13 to subject the Carrier to its penalty payment provision, which was clearly not intended to penalize changes necessitated by reduction of forces or by such rules beneficial to the employees as Rule 27 (e). Its purpose, as this Division has said was to eliminate or penalize the moving of employees from and to their regularly assigned shifts at the whim of the Carrier (Award 2225), or the indiscriminate moving of employees from one shift to another (Award 4277).

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.