

Award No. 5409
Docket No. 5165
2-EJ&E-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement John Mudroch, Overhead Crane Operator was improperly compensated for changing from one shift to another due to the carrier's shutdown of the powerhouse on April 30, 1965.

2. That accordingly the carrier be ordered to additionally compensate the aforesaid Crane Operator in the amount of four (4) hours at the straight time rate.

EMPLOYEES' STATEMENT OF FACTS: Overhead Crane Operator John Mudroch, hereinafter referred to as the claimant is employed by the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the Carrier, at Joliet, Illinois. The claimant holds seniority on the January 1, 1965 roster of the Electricians and Crane Operators at Joliet, Illinois.

Prior to Friday, April 30, 1965, claimant held the crane operator position in the powerhouse with assigned hours of 7:30 A. M. to 3:30 P. M. On Monday, April 26, 1965, the carrier posted notice that all powerhouse assignments would be abolished as of Friday, April 30, 1965. The abolishment of these positions takes place in the spring due to warm weather, and are re-assigned in the fall of the year when the powerhouse is reactivated.

On April 26, 1965, the same day that claimant received notice that his position in the powerhouse was abolished, the locomotive shop overhead crane operator Shannon Fletcher on the 3:30 P. M. to 12:00 Midnite shift was furloughed due to this shutdown, leaving a vacancy in the locomotive shop. Claimant being the junior craneman, was then forced on Fletcher's assignment, due to the Carrier's shutdown of the powerhouse and the furloughing of Fletcher.

The claimant was compensated at the straight time rate for this change of shifts.

The dispute was handled with the carrier officials designated to handle such affairs, who all declined to adjust the dispute.

him to hold. The Carrier's allowing him to place himself on the only position he could hold after his former position was abolished certainly cannot be construed as "indiscriminately moving employes from one shift to another without sanction".

Referee Jacob Seidenberg in Second Division Award 4630 held that:

"The vast majority of awards rendered both by this Division, and other Divisions of the National Railroad Adjustment Board, have held clearly and unequivocally that the rationale and purpose of the Rule was to cover those situations where the Carrier moved a **regularly assigned employe to another shift** for its convenience. * * *"

In the instant case, the Claimant was not a regularly assigned employe after his job was abolished nor was he moved to another shift for the convenience of the Carrier.

Many other Second Division Awards support the Carrier's position in this regard, among them Nos. 1816, 2067, 2224, 3705, 4061, 4062 and 4063.

In summary, the Carrier's position is that Claimant was not entitled to the overtime rate for service performed on the first day he occupied the 3:30 P. M. - 12:00 Midnight shift since he did not change from one shift to another but merely changed to his new position from an unassigned status. His former shift became non-existent, therefore, he had no shift from which to change.

Without prejudice to this position, the change was made at the Claimant's request and, therefore, the overtime provisions of Rule 13 have no application.

The Carrier respectfully requests a denial Award.

All information and data contained herein has been discussed with the Organization either in conference or by correspondence. Any allegation to the contrary which the Organization may proffer in its Answer is without foundation.

Oral hearing is waived unless requested by the Organization in which event the Carrier reserves its right to be heard.

(Exhibits not reproduced.)

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.

In April, 1965, Claimant was regularly assigned as a crane operator on the 7:30 A. M. to 3:30 P. M. shift in the Carrier's East Joliet power house. On May

1, 1965, the power house was shut down and Claimant's job was abolished effective at the end of his tour of duty on April 30. Claimant thereafter took a vacant crane operator's position, the assigned hours of which were from 3:30 P. M. to 12 Midnight.

The claim is based upon the premise that the Carrier's act of shutting down the powerhouse and abolishing Claimant's position amounted, in effect, to a change in Claimant's shift within the meaning and intent of Rule 13 which, *inter alia*, provides that when an employe is transferred from one shift to another, he will be paid at overtime rates for the first shift of each change.

In the opinion of the Board, the facts do not support the conclusion that this was a change of shifts as contemplated by Rule 13.

Accordingly, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.