

Award No. 5606

Docket No. 5432

2-AT&SF-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier denied Carman G. A. McKee his seniority rights to continue on his assigned position on the first shift, work week of Monday through Friday, rest days of Saturday and Sunday, beginning July 17, 1964 at Belen, New Mexico.

2. That accordingly the Carrier be ordered to additionally compensate Carman G. A. McKee eight (8) hours each day at his applicable pro rata rate that he was forced to work other than his first shift assignment and eight (8) hours at his applicable pro rata rate for the rest days he had to assume other than his regular rest days, beginning July 17, 1964 and up to and including July 22, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company (Western Lines), hereinafter referred to as the Carrier, employs Carman G. A. McKee, hereinafter referred to as the Claimant, at Belen, New Mexico, who had been assigned with working hours on the first shift, work week of Monday through Friday, rest days of Saturday and Sunday, on the conditioning track.

On July 17, 1946, the Carrier forced the Claimant to change working hours on the first shift to a third shift position, and also change working days consisting of Monday through Friday to working days of Friday through Tuesday, account to fill an employee's position who was off on leave due to receiving an injury.

There was a junior employee working in the trainyard who was working a temporary position on the first shift and, too, there were junior employees

right to submit such additional facts, evidence and argument it might conclude are necessary in reply to the ex parte submission of the Employees in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(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 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 were given due notice of hearing thereon.

The employees rely upon the provisions of Rules 16 and 28 as supporting their position respecting the claim presented in this docket. Rule 28 establishes the procedures under which seniority will be acquired and retained. It also deals with matters pertaining to the preparation and posting of seniority lists. This rule is only pertinent as it applies to the claimant's seniority date, namely, September 29, 1957, which is admitted by both parties.

Rule 16 has application when filling new positions, permanent vacancies and temporary vacancies of 30 days or more. It also has application to the procedure to be followed in the event the senior applicant for such a vacancy is found to be not qualified for the position for which he has applied. It has no application to vacancies of less than 30 days, such as the vacancy involved in this docket. No rule is cited which even hints at the payment of a minimum day of 8 hours for changing from one shift to another at the instance of management, or that rigid seniority principles must be applied to such temporary shift changes.

Management relies upon Rule 12 to support its defense of the action taken and the propriety thereof, including its contention respecting the correctness of the payments currently made for the service performed and the changing of shifts for a period of 6 days.

The undisputed facts of record reveal that the claimant was required to leave the first shift, to which he was assigned and perform service on a temporary vacancy on the third shift for a period of 6 days. He was, therefore, subject to Rule 12. The record is also clear that the claimant was ordered to change shifts by his foreman.

Thus, Memorandum No. 1 also has application. It is admitted the claimant was additionally compensated as Rule 12 and Memorandum No. 1 contemplate. Nothing appears in the record which would justify additional compensation.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 17th day of December, 1968.