

Award No. 5654

Docket No. 5513

2-JAX-TERM-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 50, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

JACKSONVILLE TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement on December 21, 1965 when it improperly compensated Carman, R. C. Thomas, at the straight time rate of pay for changing shifts.

2. That the Carrier be ordered to additionally compensate Carman, R. C. Thomas, four (4) hours at the straight time rate for said violation on December 21, 1965.

EMPLOYES' STATEMENT OF FACTS: Carman R. C. Thomas, hereinafter referred to as the claimant, was regularly employed as a carman on the repair track of the Jacksonville Terminal Company, hereinafter referred to as the carrier, with an assigned work week of Wednesday through Sunday, with assigned hours of 8 A.M. to 4 P.M., with Monday and Tuesday as his regularly assigned rest days.

Carman H. M. Simpson held a regular Saturday through Wednesday assignment, with assigned hours of 11 P.M. to 8 A.M., with assigned rest days of Thursday and Friday.

Carman Simpson was absent for several days, therefore, since it was necessary to fill his assignment, men were called from the overtime board to fill his assignment and compensated at the time and one-half rate of pay.

On December 20, 1965, a letter of resignation was received by the Master Mechanic from carman H. M. Simpson, whereupon the following bulletin was posted by Master Mechanic A. C. Herrington:

"December 20, 1965

TEMPORARY BULLETIN

TO ALL CONCERNED:

Due to the resignation of carman H. M. Simpson, bids will be received within the next 5 days on 11:00 P.M. Carman Job C-6, Rest Days, Thursday and Friday.

/s/ A. C. Herrington."

payment on that day and that thereafter the change of shift payment under Rule 9 of the Agreement does not apply.

(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.

Claimant was regularly assigned to work 8:00 A. M. to 4:00 P. M. Wednesday through Sunday, rest days Monday and Tuesday.

Carrier changed Claimant from one shift to another in order to cover a 11:00 P. M. Carman Job/C-6 vacancy, while the job was under bulletin to work Saturday through Wednesday, rest days Thursday and Friday.

Claimant reported off sick and unable to work his "new shift" on December 20. He came out and worked on December 21 and was paid pro rata. He claims the difference in pay at the overtime rate for the "new shift" worked by him that date.

Carrier denied his claim on the grounds that he was not available for the first shift of his changed assignment; and, therefore, forfeited his right to a punitive payment.

"Changing Shifts"

Rule 9 — Employes changed from one shift to another will be paid overtime rates for the first shift of each change, except those changing from one shift to another in the exercising of seniority rights, who will be paid pro rata rates; employes working two shifts or more on the new shift shall be considered transferred."

The dispute is over the negotiated meaning and intent of Rule 9, supra., as applied to stipulated facts.

The Rule refers specifically to changing shifts. No reference is made to a change of assignments for the obvious reason that a change in assignments is usually accomplished in the "exercising of seniority rights" in which event "changing from one shift to another" does not carry a punitive rate.

Another change in shifts can be accomplished by a unilateral transfer, as here, conditioned, however, that "employes working two shifts or more on new shift shall be considered transferred;" and, conditioned further, that "employes changed from one shift to another will be paid overtime rates for the first shift of each change."

Reasoned as above, the Claimant, who was changed from one shift to another by a unilateral transfer, is entitled to the punitive pay claimed, for working the first of his "new shifts" on December 21.

AWARD

Claim (1) Sustained.

Claim (2) Sustained.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1969.