

Award No. 6119

Docket No. 5973

2-MP-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electricians)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement of June 1, 1960, when Electrician R. D. Cramer was changed from the 8:00 A. M. to 4:00 P. M. shift to the 4:00 P. M. to 12:00 Midnight shift and was refused the overtime rate for his first shift change on March 25, 1969.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician R. D. Cramer in the amount of four (4) hours at the pro rata rate for Tuesday, March 25, 1969.

EMPLOYEES' STATEMENT OF FACTS: R. D. Cramer, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as an electrician at Kansas City, Missouri, hours 8:00 A. M. to 4:00 P. M., work week Monday through Friday, rest days Saturday and Sunday.

The claimant was assigned to the 8:00 A. M. to 4:00 P. M. shift when he was forced to change to the 4:00 P. M. to 12 Midnight shift, this being the first shift of this change he showed the overtime rate for changing shifts on his time card, but was ordered to remove it because he was not entitled to it, which constitutes the basis of the claim.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust it.

The Agreement of June 1, 1960, as amended, is controlling.

thereafter filled a series of jobs pending bulletin involving three changes of shifts. Claim for overtime under the change of shift rule was denied for the reason that claimant "was not changed from one shift to another as a holder of a regular position for the convenience of the carrier. The fundamental purpose of Rule 14(a) is to compensate an employe for the inconvenience which results from a carrier's movement of a regularly assigned employe to another shift for its convenience, . . ."

Similarly here, claimant was employed as an electrician apprentice. When the vacancy occurred pending bulletin, the electrician apprentice had an opportunity to increase his earnings by being temporarily upgraded and he took advantage of this opportunity. Upon being upgraded, he left his status as an apprentice and no longer was working as an apprentice assigned to the first shift. He filled the vacancy on the first shift pending bulletin and the vacancy terminated when the position was assigned to the successful bidder.

Since the successful bidder was an electrician on the second shift, a vacancy immediately existed on the second shift; claimant was used in the same manner on the second shift. Claimant was used as the oldest apprentice entitled to be upgraded and was given the opportunity to fill the vacancy on the basis of his seniority. After filling the vacancy on the first shift, claimant could have returned to his apprentice training schedule on the first shift, but took advantage of the opportunity to work a second shift in an upgraded capacity. Claimant was not changed from one shift to another as a holder of a regular position for the convenience of the carrier.

In handling the claim on the property, the employes attempted to expand on the application of the rule by alleging that the rule not only applied to an employe who had a regular assignment but also applied to an employe who had a regular shift. The employes in this dispute admitted that claimant as an upgraded apprentice had no regular assignment but alleged that he (claimant) "did have a regular shift which was from 8:00 A. M. to 4:00 P. M. which he had been assigned prior to March 25, 1969." General chairman's letter of June 10, 1969. The employes are inconsistent in stating that claimant had no regular assignment and then alleging that claimant had a regular shift to which "he had been assigned prior to March 25, 1969." An employe cannot have a regular shift unless he has a regular assignment which determines the shift on which he works. The rule applies to an employe who has a regular assignment and is taken off of that assignment by the carrier to meet an operating requirement.

In this case, claimant did not have a regular assignment when he was filling the temporary vacancy pending bulletin on the first shift. That vacancy terminated when the position was awarded to the successful bidder. Claimant was again used in an upgraded capacity to fill a temporary vacancy pending bulletin on the second shift. Claimant was not moved from a regular assignment for this purpose. There was no rearrangement of force involved, merely the filling of vacancies pending bulletin. Under these circumstances, Rule 10 is not applicable and the claim should 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 waived right of appearance at hearing thereon.

This is a claim for the difference between the time and one-half rate and the straight time rate on March 25, 1969, based on the allegation that the Claimant was entitled to be paid overtime rates under Rule 10 when changed from the first shift to the second shift.

"RULE 10.

OVERTIME CHANGING SHIFTS

Employees changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply when returning to their regular shift nor when shifts are exchanged at the request of employees involved or in the exercise of their seniority rights."

The Carrier admits that if an electrician were regularly assigned to the first shift and was instructed by his supervisor to ride a bulletin advertising a vacancy on the second shift, such regularly assigned electrician would be entitled to be paid overtime rates for the first change of shift. The rule applies to an employe assigned to a position and required by management to leave that position to work on another shift. Examination of the record discloses substantial differences.

In this case, an apprentice in the electrical craft had been following his scheduled training program when a journeyman electrician on the first shift retired. The apprentice was upgraded to ride the bulletin. The first shift position was bid in by a second shift electrician. When the position was awarded, the Claimant reverted to his apprentice status. He was promoted a second time to ride the bulletin on the second shift job. When that job was awarded, he reverted to his apprentice training schedule.

Claimant filled a series of temporary vacancies on regular bulletined jobs for interim periods. The fundamental purpose of Rule 10 is to compensate an employe for the inconvenience which results from a Carrier's movement of a regularly assigned employe to another shift for its convenience and said rule is inapplicable to the change of shifts involved in this dispute. Awards 4630, 5045, 5409 and 5507. Accordingly, the claim will be denied.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

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