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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6515
Docket No. 6370
2-N&W-CM-'73

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

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement when it improperly compensated Carman H. O. Clemson, at the straight time rate of pay for changing shifts August 4, 1970.
2. That the Norfolk and Western Railway Company be ordered to additionally compensate Carman H. O. Clemson for four (4) hours at the straight time rate for said violation on August 4, 1970, and in addition be paid interest of 6% per annum, compounded annually on the anniversary date of the claim until paid.

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.

On August 3, 1970 Claimant was recalled from furlough and assigned to a third shift position with hours from 11 PM to 7 AM. While working that shift Claimant noticed that there was a first shift position under bulletin with hours of 7 AM to 3 PM. Claimant filed a written request that he be allowed to work said first shift position during the period of bulletin stating that he would protect as of August 4, 1970. The Carrier complied with Claimant's request and Claimant commenced working said position at 7 AM August 4 after he finished his third shift he had commenced at 11 PM August 3, 1970.

The Organization alleges that the proper application of Rules 6(a) and (b) and 12(a) and (b) support the claim herein. The Carrier responds to the effect that under Rule 12(c) and others its method of payment to Claimant was correct.

Rules 6(a) and (c) and 12(a), (b) and (c) are as follows:

OVERTIME
Rule No. 6

- (a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.
- (c) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour for any such service performed.

OVERTIME - CHANGING SHIFTS
Rule No. 12

- (a) Except as provided in Paragraphs (b), (c), and (d) of this rule, employees changed from one shift to another will receive overtime rates for the first shift of change. Employees working two or more consecutive shifts on new shifts shall receive overtime rates when changed back to their regular shift.
- (b) This, however, does not apply to employees who are changed from one shift to another as a result of bidding in a new job or vacancy, or to employees who are displaced by employees older in seniority and forced onto a new job, or to employees who are changed from one shift to another to fill permanent vacancy or new job account of being the youngest employe in seniority. Such employees shall receive pro rata rate for such change.
- (c) Employees desiring to change shifts on account of sickness or other good causes may do so without expense to the Company, provided arrangement is made through the official in charge.

The Organization further relies on a Letter of Understanding dated May 15, 1956 which reads as follows:

THE VIRGINIAN RAILWAY COMPANY
Terminal Building
Norfolk 10, Va.

G. M. Cornell
Assistant to President

May 15, 1956
File: 67-5.

Mr. E. L. Clark, General Chairman
Brotherhood of Railway Carmen
of America
310 Straley Avenue
Princeton, West Virginia

Dear Sir:

In our conference at Norfolk, Va., on May 15, 1956, we again discussed the question of payment to employe forced on another shift to fill a permanent vacancy or new job during bulletin period.

When it is necessary to fill a permanent vacancy or new position during the bulletin period of the position it has been our practice to fill it with the junior employe whose own job can be blanked. We have not been paying such employe overtime on the first and last shift on the theory that he was filling a permanent vacancy or new job and hence came under Rule 12(b).

After our further discussion it appears to me there may be a reasonable compromise of this matter. I suggest that we continue our practice of using the junior employe whose job can be blanked when it is necessary to fill a permanent vacancy or new position during the bulletin period. If such employe is the one who is assigned at the end of the bulletin period, either by bidding in the job or by being forced on the job under applicable rules, he will not receive any overtime for changing shifts. If, however, another employe is assigned at the end of the bulletin period the employe filling the vacancy during the bulletin period will be paid overtime the first day he fills the position, if it is a change in shifts, and the day he returns to his own shift, if it is a change in shifts.

Inasmuch as we desire to make any ruling agreed upon applicable to all crafts under the Shop Crafts' Schedule of January 1, 1943, will you please handle this matter with representatives of the other crafts, If the above disposition of this matter is agreeable let me know and I will prepare a formal interpretation to cover it.

Yours very truly,

S/ G. M. Cornell
Assistant to President

The application of Rule 12(c) is controlling here. As we read that Rule the Carrier is exempted from paying punitive rates where a change in shifts is made to accomodate an employe who is holding a temporary position who expresses a desire to do so. The record clearly reflects that the change in shifts which is the subject of this claim was made at the request of the Claimant. He clearly falls within the category of an Employe " . . . desiring to change shifts . . .". It does not do violence to the agreement to include within the definition of "other good causes" the satisfaction of the employes request when the Carrier determines that it is consonant with the proper operation of the railroad.

Let us emphasize that we are not dealing here with an Employe who is the holder of a regular position but an employe just recalled from furlough who at the time of the change was filling a position on a temporary basis pending its proper assignment through the bulletin procedure. We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E.A. Killen

Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.