

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That rules of the controlling agreement and the service rights of the following carmen, Farris E. Moore, Franklin Beach, Kern Moore, D. R. Dillow, Rush Stanley, R. V. May and Henry Finley were violated August 1, 1974 account being changed from second shift to first shift and only allowed straight time rate in violation of Rule 13.
2. Accordingly the above identified carmen are each entitled to be additionally compensated four (4) hours at carmen's applicable straight time rate in lieu of said violation.

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.

Claimants were verbally notified their jobs were abolished on the second shift and they were to report to the first shift on the following day. They were not given advance notice. The applicable rule, Rule 13 and understanding provide:

"(a) Except as provided in (b) of this rule for employes on relief assignments. Employes changed from one shift to another will be paid overtime rates for the first shift of each change.

Understanding - (1) The words 'employes changed' used in the first sentence of this rule, means employes changed at the instance of the company, and employes so changed must be paid at the overtime rate."

The question here is whether Claimants were transferred at the instance of the Carrier. We hold they were and the claim should be sustained. Award 6791 (Zumas) is controlling where we said:

"The Board finds that the claim must be sustained. Even if the positions had in fact been abolished as Carrier contends (and there is no evidence that they were), it is unrefuted that Claimants were not so advised nor was a copy furnished to the Local Chairman. Under these circumstances the position of the Carrier is without merit."

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of July, 1977.