

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7532
Docket No. 7429
2-SCL-EW-'78

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: { System Federation No. 42, Railway Employees'
Department, A. F. of L. - C. I. O.
(Electrical Workers)
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the current working agreement, particularly Rule 11, when Carrier forced Electrician M. F. Williams to change shift and refused to pay the overtime rate for his first shift change on August 9, 1975.
2. That, accordingly, the Carrier be ordered to additionally compensate Electrician M. F. Williams four (4) hours at his pro rata rate of pay.

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 1, 1975, Carrier posted bulletins No. 125 and No. 126 listing two assignments which would be cut off in the Hamlet Diesel Shop effective the close of shift on August 8, 1975. After bulletin No. 126 was posted, Claimant was displaced from his second shift assignment by a senior employe. However, Claimant elected to continue working by displacing another employe on the third shift. The Organization charges that the Carrier violated Rule 11 of the current working Agreement when they allegedly forced Claimant to change shifts without payment of the overtime rate for his first shift change on August 9, 1975. Rule 11 reads, in pertinent part, as follows:

"Employes changed from one shift to another will be paid overtime rate for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

The issue before us is whether Claimant is entitled to the overtime provided in Rule 11 when he changed shifts through the exercise of seniority.

It is the Carrier's position that Rule 11 does not apply in cases where an employe exercises seniority, since this constitutes a voluntary move. The Carrier also contends that the intent of Rule 11 is to preclude Carrier from indiscriminately moving employes from one shift to another for its own convenience.

The Organization counters that the first paragraph of Rule 11 was intended to provide additional compensation for an employe because of the inconvenience resulting from a change in shifts, if such change is caused by reasons beyond his control. It is the contention of the Organization that the Claimant's change in shifts was caused by the Carrier's abolishment of two (2) Electrical Workers' positions at the Hamlet Diesel Shop, and thus the Claimant did not change shifts of his own free will, but was forced to do so by the Carrier's actions.

Numerous prior Awards of this Division have dealt with claims that were essentially similar to the instant claim and with Rules that were identical to Rule 11 of the controlling Agreement in the instant claim. Many of these prior Awards have held that the overtime rate does not apply when employes are exercising seniority or changing shifts for their own benefit. Second Division Award No. 7251 (Roadley), which involved the same parties as the instant dispute, denied a claim which was essentially similar to the one before us. In Award No. 7251, the Board stated, in pertinent part:

"It is the view of the Board in this case that it was Claimant's exercise of his seniority that resulted in the change in his shift, and not a change in shift that necessitated his exercising his seniority....

We do not find that the Claimant's change in shift assignment was the result of indiscriminate action by Carrier or that the Agreement was violated."

A careful examination of the record before us evidences that the preponderance of prior Awards concerning changing shifts have held that when positions are abolished, the resultant exercise of seniority does not constitute a transfer at the direction of Management, but is simply an exercise of seniority. We find those Awards persuasive, and suscribe to the reasoning thereof. Accordingly, we shall deny the claim. (See Awards of the Second Division Nos. 7251, 2224, 5029, 5409, 5507, 4549).

A W A R D

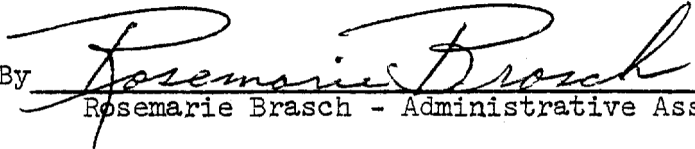
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of May, 1978.