

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11750
Docket No. 11477
89-2-87-2-126

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement Electricians R. H. Broeg, T. L. Dean, R. D. Dermer, J. K. Halstead, D. R. Kaneshiro, L. R. Leathers, B. Lee, III, J. I. Sterner, K. D. Wagner and G. D. Wentworth, all of Burlington, Iowa, were denied overtime compensation for date of October 13, 1986, when they changed shifts as the result of Carrier having abolished the third shift at Burlington, Iowa.

2. That accordingly, the Carrier be ordered to compensate the above named Electricians in accordance with Rule 10(a) of the governing Agreement.

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 employes 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.

The Claimants are regularly employed as Electricians at the Carrier's Burlington, Iowa, Repair Facility. Prior to the date of the instant Claim, all Claimants were working the third shift at the Burlington Facility.

Effective October 10, 1986, the Carrier abolished the positions of ten Electricians and three crane operators on the third shift of the Burlington shop. There were no other positions remaining on this shift. The Claimants exercised their seniority to assume positions on the first or second shifts, effective October 13, 1987, and also submitted overtime claims for that day that resulted from the shift change. Their requests for overtime pay were subsequently denied.

On November 20, 1986, the Organization charged the Carrier with violating Rule 10(a), which reads:

"Employees transferred from one shift to another at the direction of management will be paid overtime rate for first shift worked on the shift to which transferred and if he works more than one shift on the shift to which transferred will be paid at overtime rate for the first shift worked after returning to his regular assignment. Such overtime payment shall not apply to transfers made as a result of the exercise of seniority."

According to the Organization, the Carrier abolished all Electricians' positions on the third shift, thus leaving the Claimants with no choice but to move to another shift or be without a job. They cited similar Second Division Award 1161 which read in pertinent part:

"The carrier abolished the shift on which they were working. Even though the carrier now seems to argue that what the men did thereafter was of their own choosing, the responsibility of the carrier for the men taking the new positions seems to be established...."

The Carrier maintained, however, that Rule 10(a) specified restrictive conditions which were not fulfilled in the instant case, thus precluding Claims under its time-and-one half provisions. These restrictions included the requirement that the transfers must be "at the direction of management" and not made "as a result of an exercise of seniority," and that the transfers must be temporary with the employees retaining a right to return to their regular assignments. It cited Second Division Award 2067, which stated:

"Rule 18(a) of the current agreement provides the following: 'Employees transferred from one shift to another at the direction of management will be paid overtime rate for the first shift worked on the shift to which transferred and if he works more than one shift on the shift to which transferred will be paid at overtime rate for the first shift worked after returning to his regular assignment. Such overtime payment shall not apply to transfers made as a result of the exercise of seniority.'

...Rule 18(a) contemplates that the change made be of a temporary nature and not one of a permanent nature. The rule contemplates that an employee will be returned to his regular assignment. In the case before us, the claimants could not be returned to their regular assignments because they received new regular assignments, their former regular assignments having been abolished due to a force reduction."

In the opinion of this Board, Rule 10(a) of the controlling Agreement clearly refers to an employee's temporary transfer from a regular assignment to another position. In the instant case, the transfers were not temporary, but, rather were permanent, as the Claimants' former positions were abolished. Further, the Claimants reverted to their new shifts through the exercise of their seniority rights, not through transfers at the direction of the Carrier. Although as pointed out in Second Division Award 4561, a certain amount of involuntariness is involved in such a situation, it still remains a voluntary act to exercise one's seniority in the interest of remaining on the job.

The Board denies the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1989.