

Award No. 467

Docket No. 463

2-NYC-MA-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinists W. Fuller, J. Allen and O. Koslik be paid time and one-half for being required to change shift, on account of being displaced, February 13, 1938.

Further, that O. Koslik be paid time and one-half for being required to return to his former shift December 12, 1938, upon restoration of force.

JOINT STATEMENT OF FACTS: Under date of February 8, 1938, a notice was posted to various crafts at Harmon engine house, including the dropping of four (4) machinists, notice also showing the gangs in which jobs were to be dropped and the names of the men who would be furloughed effective February 12, 1938. The names of the machinists to be furloughed were:

J. J. Zeck
S. Hayward
W. H. Kendall
W. VanBuren

The jobs dropped and disposition of machinists thereon were as follows:

- 1st trick—1 machinist in machine shop, namely, W. Fuller, who took a vacant job on third trick.
- 1st trick—1 machinist in quarterly inspection and repair gang (dead work gang), namely, M. Buckley, who displaced Otto Koslik on first trick running repair forces, Koslik taking vacant job on second trick.
- 1st trick—1 machinist in quarterly inspection and repair gang, namely, G. Busteed, who displaced J. Allen in first trick running repair forces, Allen taking vacant job on second trick.
- 2nd trick—1 machinist in machine shop, namely, W. Wren, who took a vacant job on same trick.

There were no junior men on first trick whom Machinists Fuller, Allen and Koslik could displace.

On December 12, 1938, the force was increased in quarterly inspection and repair gang by one (1) machinist, and Machinist M. Buckley was restored to his former position in the quarterly gang, and Machinist Otto Koslik returned to his former position in the running repair forces on the first trick from the second, as per Rule 27. At this time Machinist Koslik claimed overtime rates for the first shift worked (December 12, 1938) on the first trick after changing from the second trick under Rule 13, and which was not allowed.

No prior claim has been made for overtime rates for Machinists Fuller, Allen and Koslik for February 13, 1938.

Rule 13 reads as follows:

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

POSITION OF EMPLOYES: It is the contention of the employes that in the reduction of forces Machinists Fuller, Allen and Koslik were displaced due to the exercising of seniority by senior employes and had to accept positions on other shifts; that, in accordance with Rule 13 of the agreement, they were entitled to the payment of time and one-half for the first change of each shift.

The committee desires to call attention to Award No. 237, Docket No. 238. In this award your Board recognized that employes in that instance, under a similar condition, were entitled to payment of time and one-half. Rule 13 of our agreement is identical to the rule quoted in this award.

On December 12, 1938, when the forces were increased, Koslik was required to return to his former position in compliance with Rule 27 of this agreement.

Rule 27.

“When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before reducing the force. When the force is reduced, seniority as per Rule 31 will govern, the men affected to take the rate of the job to which they are assigned.

Forty-eight (48) hours' notice will be given before hours are reduced. If the force is to be reduced, four days' notice will be given the men affected before reduction is made, and lists will be furnished the Local Committee.

In the restoration of forces, senior laid-off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former position if possible, regular hours to be reestablished prior to any additional increase in force (underscoring ours).

The Local Committee will be furnished a list of men to be restored to service. In the reduction of the force the ratio of apprentices shall be maintained.

NOTE—Effective September 1, 1931.

In case of a reduction in force or the abolition of a position, employes affected shall be allowed to exercise their seniority in displacing junior employes at their home points.

Employes will promptly exercise their displacement rights so that all men affected may be placed within fifteen (15) days. Employes who do not so exercise displacement rights will be furloughed.

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.

The parties to said dispute were given due notice of hearing thereon.

These findings and opinions apply to Docket No. 462, Award No. 466, and Docket No. 463, Award No. 467.

Both cases involve an interpretation of Rule 13 of the agreement covering changing from one shift to another. The question has been before this Division before and we are cited by the employes to our Awards Nos. 56 and 237, sustaining the contention here made.

The cases arise as a consequence of displacements from one shift to another, resulting from force reductions, except that in Docket No. 463, in the case of a claim of O. Koslik for one of the days involved, the shift resulted from a restoration of forces causing him to return to the one formerly occupied by him before the force reduction.

All of the shifts were a consequence of steps taken by the management and consequently do not come within the purview of the last sentence of Rule 13, excepting its application, "when shifts are exchanged at the request of the employes involved." In none of these cases could there be said to have been any "exchanges" in shifts. There were changes, but no exchanges.

Rule 13 is applicable and each of the claims will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1940.