

Award No. 608

Docket No. 628

2-D&SL-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 47, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE DENVER AND SALT LAKE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That as provided in Rule No. 7, Machinist Helper A. W. Brantner, should have been paid at rate of time and one-half on August 12, 1940, when he was forced from the day shift to the night shift.

EMPLOYEES' STATEMENT OF FACTS: Machinist Helper F. W. Kusulas was injured, which created a vacancy. Mr. Kusulas was detained from work some six weeks, he held a day shift from 8:00 A. M. to 4:30 P. M. six days per week. This vacancy was bulletined as per Rule 9.

Machinist Helper Brantner working on the night shift placed his bid for this job and was awarded the same.

August 12, 1940, Mr. Kusulas returned to the service, therefore displacing Mr. Brantner and forcing him back to the night shift.

POSITION OF EMPLOYEES: This case has been handled in accordance with the established practice of handling grievance cases on The Denver and Salt Lake System. This case was handled by General Chairman Traylor, of the International Association of Machinists until the general superintendent insisted that all crafts were affected.

We contend that Machinist Helper Brantner should be paid time and one-half for the change of shift when he was forced on the night shift by the return of Mr. Kusulas to the service as per Rule 7 of the current agreement, Rule 7 reads as follows:

RULE 7

Changing Shifts

Employes changing from one shift to another will be paid overtime rates for the first shift of each change. Employes 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 employes involved.

This rule does not affect employes assigned to more than one shift on relief assignments.

Mr. Brantner worked more than two shifts on this particular job, and therefore was considered transferred as per the above mentioned rule. Brantner did not request to be changed to the night shift but was forced to take this shift or quit. Therefore, he should be paid the overtime rate.

provision is only applicable when an employe is forced by some action of the carrier to change from one shift to another. It is equally clear that when an employe voluntarily makes a change like this by exercising such seniority as he may have, the penalty provision was not intended to be applicable.

The rule relied upon by the petitioner when applied to the facts of record and considered in conjunction with other applicable rules, do not support the claim and it should be denied.

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 waived right of appearance at hearing thereon.

While Rule 7 of the agreement in effect provides that overtime rates of pay will apply when changing shifts, Rule 9, paragraphs (e), (f) and (g), seem to modify, under certain circumstances, the provisions of Rule 7.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of April, 1941.