

Award No. 723

Docket No. 687

2-B&M-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That R. C. Matte, machinist, should be compensated at punitive rate for the day he was changed from night shift to day shift, under the provisions of Rule 10.

JOINT STATEMENT OF FACTS: R. C. Matte was a furloughed machinist from Billerica shops, with a seniority date of June 1, 1936.

On July 13, 1940, he reported at the shop and asked for work and covered different jobs which were open from day to day because of the fact that other machinists were laying off on the day shift from July 13, 1940 to July 20, 1940, inclusive, except Sunday, July 14.

A machinist named Crombie, on the night shift, wished to be away and Matte worked in his place from July 22, 1940, to July 29, 1940, inclusive, except Sunday, July 28.

From July 30, 1940, to August 19, 1940, except Sundays and except August 3, he worked on the day shift in place of machinists who were laying off.

When Machinist Matte was changed from the day shift to the night shift, he did not claim punitive rate for the first day of the change. He did, however, claim compensation at punitive rate under the provisions of Rule No. 10 when changed from nights to days which claim was denied by the carrier.

Rule 10 of agreement between System Federation No. 18, Railway Employees' Department, American Federation of Labor and the Boston and Maine Railroad, which became effective April 1, 1937, under caption "Overtime—Changing Shifts" reads:—

Employes changed from one shift to another for the convenience of the Railroad 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, or when the change is made by the exercise of seniority in bidding or displacing, nor to employes on relief assignments.

POSITION OF EMPLOYEES: The claimant was furloughed and reported at the shop for work without being called to service. The management used

Rule 10 quoted in the joint statement of facts does not state that when employes change from one shift to another they will be paid overtime rates for the first shift of each change, but does state that when they change from one shift to another "for the convenience of the railroad" they will be paid overtime rates for the first shift of each change.

Having Mr. Matte work nights commencing July 22, 1940, was no convenience to the railroad, but it was a convenience to a fellow machinist, Mr. Crombie, who wanted to take a vacation and was permitted to be off because of the availability of Machinist Matte.

Rule 10 of the agreement was intended to apply only where an employe on a regular assignment is changed from one shift to another because of some necessity of the management and when to do so is of convenience to the railroad.

This particular case is analogous to cases mentioned in the last sentence of the rule such as those changes made at the request of the employes or made by exercise of seniority, etc.

Award No. 263 of the Second Division, National Railroad Adjustment Board in Docket No. 257, dispute between System Federation No. 99 and the Illinois Central Railroad Company, Referee John A. Lapp assisting, shows that while the rule in the Illinois Central agreement was somewhat different from the Boston and Maine rule, and the circumstances in Award No. 263 were that a man working on the 3:00 P. M. shift was the senior applicant for a vacancy on 7:00 A. M. shift, that part of the opinion of the Division reading:—

"The reading of Rule 14 indicates that its obvious intention was to protect workers from loss in making a shift, when such shift was not according to their own choice, and that when an employe changes shifts through his own choice, he assumes whatever loss may accrue to him in making the shift. A fair interpretation of the words also indicates that the word 'exchange' as used in the rule means either exchanging one job for another or exchanging jobs with another employe."

may well be taken into consideration by the members of the Second Division in arriving at decision in this case of Machinist Matte.

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.

The facts in this case are not in dispute. The claimant was furloughed and reported at the shop for work without being called to service. The carrier used him in place of an employe who was off. He continued to work steadily without a break from day to day. He was changed from the day shift to the night shift to work in the place of an employe who went on a vacation. When the employe returned from his vacation Matte was again assigned to the day shift and continued to work on for a period of weeks.

Rule 10 provides that employes changed from one shift to another for the convenience of the railroad will be paid overtime rate for the first shift of each change. The rule provides it will not apply when the shifts are at the request of the employe involved or when the change is made by the exercise of seniority in bidding or displacing.

This record clearly shows that the shift was not made at the request of the employe involved or was not made by the exercise of seniority in bidding or displacing. The rule also provides that it will not apply to employes on relief assignment. Under the record in this case, it cannot be said that the employe was on relief assignment. In Award 478, this Division said:

“* * * There is no authority in the schedule which authorizes the re-call of furloughed men and treating them as though they were extra men called for a particular piece of work. The carrier is, of course, under no compulsion to recall furloughed men; it can use the regular men although perhaps at the cost of overtime. To sustain the carriers' positions would be in substance to hold that it can treat furloughed men as though they were an extra list callable at straight time, thus avoiding payment of overtime to regular forces and at the same time excepting the application of the notice rule so far as they are concerned. * * *”

We conclude that the rule involved requires the sustaining of the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.