

Award No. 939

Docket No. 866

2-ACL-MA-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That H. E. Frederick, machinist, Montgomery, Alabama, be compensated at overtime rate for changing shifts on September 9, 1942, and for service performed on second shift, Sunday and Labor Day, September 6 and 7, 1942, respectively, in the total amount of \$11.64.

EMPLOYES' STATEMENT OF FACTS: Three shifts of machinists are regularly employed in the carrier's enginehouse at Montgomery, Alabama. Twenty-four-hour service is thus provided and to include Sundays and holidays. Sunday and holiday assignments are established in accordance with the provisions of Rule 3 (b). The rate of pay established for machinists amounts to 97¢ per hour.

Machinist H. E. Frederick is regularly assigned to the first shift, 7:00 A. M. to 3:30 P. M., six days per week. On September 4, 1942, Frederick was doubled from the first to the second shift for the purpose of temporarily filling the regular second shift assignment of Machinist E. W. Sceals, 3:30 P. M. to 12:00 Midnight, inclusive of Sundays and holidays, pending his (Sceals') return to duty. Machinist Sceals was absent from duty effective August 31, 1942, until September 15, 1942, because of injuries sustained when he fell from the running board of a locomotive on August 30, 1942.

Machinist Frederick returned to his first shift assignment on September 9, 1942, after working Sunday and Labor Day (September 6 and 7) on the second shift. His return to the first shift as of September 9 was occasioned by the employment of a new machinist, M. B. Johnson, September 8, 1942, who was placed on the second shift in thus releasing Frederick to the first.

Frederick was compensated at overtime rate for changing shifts as of September 4, 1942. He was denied overtime rate for returning to his first shift assignment as of September 9, 1942, and for service performed on Sunday and Labor Day when temporarily working on the second shift.

POSITION OF EMPLOYES: Rule 9 of the current agreement reads:

Pay for Changing Shifts

Employes changed from one shift to another will be paid overtime rates for the first shift of each change except when employes exercise their seniority for such change. Employes working two shifts or more on a new shift will be considered transferred.

Affidavit (carrier's Exhibit A) by Enginehouse Foreman J. E. Page shows the exact circumstances under which Machinist Frederick was permitted to take the 7:00 A. M. shift on the ninth of September. He was allowed to exercise his seniority on this shift under Rule 9, which has already been quoted in the foregoing part of this submission.

In view of the provisions of Rule 9 and the fact that Machinist Frederick exercised his seniority to change to this shift, he was properly compensated at straight time rate and the claim for compensation at overtime rates is not justified.

Carrier respectfully requests that all of the claims made by Machinist Frederick be declined.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

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.

Machinist H. E. Frederick was not regularly assigned to Sundays and holidays as provided for in Rule 3 (b).

He is entitled to time and one-half for work performed on Sunday, September 6 and Labor Day, September 7, 1942.

He was transferred by the carrier from the second to the first shift and is, therefore, under the provisions of Rule 9, entitled to the time claimed on September 9, 1942.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 28th day of July, 1943.