

Award No. 994

Docket No. 911

2-MP-MA-'44

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- a. That carrier at Kansas City, Missouri, violated provisions of controlling agreement and Rules 8 (a) and 10 thereto.
 1. Rule 8 (a) was violated wherein carrier caused Machinist Helper E. L. Gross to lay off from his regular assigned day shift 8 A. M. to 4 P. M., for purpose of equalizing overtime.
 2. Rule 10 was violated wherein carrier compensated Claimant Gross at straight time rate for first shift change date of September 15, 1942.
- b. 1. That carrier be ordered to compensate Claimant Gross in amount equal to that he would have earned had he been permitted to work his regular assigned day shift September 15, 1942—8 A. M. to 4 P. M.
2. That carrier be ordered to additionally compensate claimant at rate of time and one-half for service rendered on first shift change 4:30 P. M. to 1 A. M. September 15, 1942.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri, carrier maintains large roundhouse and backshop forces. Roundhouse forces are regularly assigned to three eight-hour shifts, 8 A. M. to 4:00 P. M., 4 P. M. to 12 midnight and 12 midnight to 8 A. M. Machine shop forces are regularly assigned to two shifts 7:30 A. M. to 4:30 P. M. and 4:30 P. M. to 1 A. M. Seniority of employes in roundhouse and backshop is consolidated.

September 14, 1942, Machinist Helper G. L. Gross, who was regularly assigned to day shift in roundhouse 8 A. M. to 4 P. M., was directed by carrier representatives to not report for his regularly assigned helper job the following day but to report to backshop for service as machinist, 4:30 P. M. to 1 A. M. shift.

As result of action of carrier, claimant was denied the opportunity to earn wages to which entitled for day shift September 15, 1942. Claimant was compensated at rate of straight time for service rendered, first shift change 4:30 P. M. to 1 A. M., September 15, 1942.

There is no rule or provision made in the memorandum agreement of June 18, 1942, that would permit of allowing Mr. Gross' claim, to-wit:

Eight (8) hours at helper's rate. He did not work as a machinist helper on September 15, 1942.

Eight (8) hours at time and one-half rate for the service that he did perform as a machinist from 4:30 P. M., to 1:00 A. M. (less meal hour of 30 minutes), September 15, 1942.

The complainants cite Rule 8 (a) and 10 of the July 1, 1936, agreement to support their claim. The rules read:

Distribution of Overtime: Rule 8 (a) When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time.

Overtime changing Shifts: Rule 10. Employees changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply when returning to their regular shift nor when shifts are exchanged at the request of employees involved or in the exercise of their seniority rights.

POSITION OF CARRIER: That the rules of the agreement cited by the complainants are not applicable to the instant case.

Rule 8 is captioned "Distribution of Overtime." Mr. Gross was not required to work overtime, neither was he laid off during regular hours to equalize the time (overtime). He completed his assignment as a helper at 4:00 P. M., September 14. He was paid for a day's labor for September 14—eight (8) hours pay at the prescribed hourly helper's rate of 68¢ per hour, or \$5.44. He was also paid for his labor as a machinist on September 15, 1943, viz: eight (8) hours at the machinist's prescribed rate of 96¢ per hour, or \$7.68. Mr. Gross did not work overtime on September 14 or September 15. He worked but eight (8) hours on each date and was paid for his labor in accordance with the agreement.

The complainant's contention that he was laid off as a helper on September 15 is not a fact. Mr. Gross was not a recognized helper available for work as such under rules of the agreement on September 15. He ceased to be a helper and available for work as such at 4:00 P. M. on the preceding date—September 14. On September 15 he was, in accordance with the agreement, available for work as a mechanic (machinist) and this is the class of work he performed and was paid for on that date.

Rule 10 is captioned "Overtime Changing Shifts." Mr. Gross was not changed from one shift to another as contemplated in the application of this rule. He was not, by an exclusive act of his employer, changed from the 8:00 A. M. shift of helpers to the 4:30 P. M. shift of machinists. The facts are, as heretofore stated, Mr. Gross was selected for advancement from helper to mechanic under an agreement of June 18, 1942, and there is no rule of this agreement providing for or contemplating that men advanced under the provisions thereof would be paid a bonus or penalty time when they are advanced from the lower ranks of employment status to a higher one.

While this particular rule (No. 10) also provides that employees will not be paid overtime rate for the first shift of a change when done in the exercise of their seniority rights, the carrier feels that even this part of the rule is not applicable to the instant case. If your Honorable Board should find otherwise, and that this rule (No. 10) is involved in the case, then the claim should be denied on the basis of an employee changing shifts in the exercise of his seniority rights.

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 upgrading arrangement agreed upon June 18, 1942 did not in any way change the nature or effect of Rule 8 (a) or Rule 10 of the prevailing agreement. The disposition of the dispute must rest primarily upon a judgment as to the character of the controlling facts involved in this proceeding.

The evidence of record supports the conclusion that the rights of Machinist Helper Gross were not terminated or diminished by his being upgraded to machinist; that the carrier directed him not to report for work on his regular or first shift as helper September 15, 1942; and that he was thus deprived of this day's work, despite the requirement that "When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time." This constituted a violation of Rule 8 (a) of the agreement.

The evidence of record also supports the conclusion that the claimant, as upgraded machinist, was assigned by the carrier to the second shift September 15, 1942; that the assignment was not made in the exercise of the claimant's seniority rights; and that the claimant was paid straight time for his first tour of duty on this shift, despite the requirement that "Employes changed from one shift to another will be paid overtime rates for the first shift of each change." This constituted a violation of Rule 10 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.