Award No. 1161

Docket No. 1079

2-LV-MA-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 96, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That employes subject to the current agreement who were changed from the 3:30 P. M. shift on May 27 to the 7 A. M. shift on May 28, 1945, were not properly compensated at overtime rates under said agreement, and particularly Rule 14 thereof.

2. That each affected employe entitled to be additionally compensated for his service on May 28, 1945, in the amount of 4 hours at the applicable pro rata rate are—

(a) Machinists—William J. Muffley, W. H. Oswald, Frank B. Decker, Samuel C. Williams, Everet Slocum, Paul M. Rogers and Robert B. Hugo.

(b) Machinist Helpers—Wasyl Fedorko, A. Walters, Amandus Confur, Robert C. Westbrook, Stephen Sobiech and Joseph S. Kennedy.

EMPLOYES' STATEMENT OF FACTS: That the carrier, at Sayre, Pennsylvania, locomotive shops, on May 28, 1945, effected a reduction in expenses by the abolishment of the second trick, and the employes thereon who were not furloughed were authorized to place themselves on other jobs, and copy of the notice dated May 24, 1945, is submitted herewith and identified as Exhibit A. The employes who were affected by the change from the second shift on May 27 to the first shift on May 28 claimed overtime rates for their first day's service on the new shift, and these claims have been handled in accordance with the agreement effective November 1, 1942 up to and including the highest designated carrier officer to whom such matters are subject to appeal without having resolved a settlement of the dispute.

POSITION OF EMPLOYES: It is the position of the system federation that the carrier effected a reduction in expenses under the provisions of Rule 27 and thereby changed the employes affected, hereinabove named, from one shift to another within the clear meaning of Rule 14, reading:

> "Employes changed from one shift to another will be paid overtime rates for the first shift of each change. This does not apply when employes exercise their seniority to bid on positions. Employes working two shifts or more on a new shift shall be considered transferred. Employes will not be permitted to exchange shifts with each other."

Four days' notice will be given employes affected before reduction is made and lists will be furnished the local committee.

* * * * * * * * * * *"

Rule 57, as it pertains to this case, reads as follows:

"* * * * * * * * * * *

In case of a reduction in force, abolition of a position, or in balancing of forces, employes affected shall be allowed to exercise their seniority in displacing junior employes at their home point, in their respective crafts."

The rule under which the employes make claim in this case is Rule 14, which reads:

"Changing Shifts

Employes changed fom one shift to another will be paid overtime rates for the first shift of each change. This does not apply when employes exercise their seniority to bid on positions. Employes working two shifts or more on a new shift shall be considered transferred. Employes will not be permitted to exchange shifts with each other."

The shift of these employes was not changed by the management. The positions of the shift on which they were employed were abolished, and the men exercised their right of displacement in accordance with their seniority. The seniority of all of these employes entitles them to positions on the second trick, but they prefer the first trick and, therefore, the change of shifts was of their own choosing and not required by the management. Under the rules, they were not entitled to overtime for the shift selected by them.

In confirmation of this conclusion, attention is called to Award No. 237, in which the opinion of the Division, in part, is:

"* * * * * If any of these three employes had an opportunity to choose a place on the same shift, but chose, rather, to take a different shift, the changing of shifts would be a voluntary act, and he would not be entitled to overtime. The record does not disclose whether any one of the three employes involved in this dispute could have taken a place on the same shift. If any of the three chose voluntarily a different shift, he is not entitled to overtime."

In view of the fact that under the rules of the agreement, these employes are not entitled to overtime for the change in shifts, and this is definitely and specifically confirmed by the ruling of your Board, we ask that the claim 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 were given due notice of hearing thereon.

There is just one question to be settled here: Were the claimants transferred from one shift to another by the carrier or was the change made on their own volition?

Varying inferences can be drawn which might determine this issue either way. There are two important facts which seem to us controlling.

The carrier abolished the shift on which they were working. Even though the carrier now seems to argue that what the men did thereafter was of their own choosing, the responsibility of the carrier for the men taking the new positions seems to be established by the letter of I. L. Harper of July 2, 1945 to J. P. McSparron, general chairman machinists, which reads in part as follows: "Machinists on the second trick were given the necessary four (4) days' notice that their jobs were abolished and were notified to exercise their seniority on the daylight shift . . ."

We think that the record sustains the claim of the employes that they took the new positions on the daylight shift at the instance of the carrier.

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 October, 1946.