

Award No. 1235

Docket No. 1149

2-MKT-MA-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

DISPUTE: CLAIM OF EMPLOYEES: That Machinist Helpers Sidney Fore, Clifford Myers, G. L. Coover and R. W. Lero are each entitled to be additionally compensated in the amount of four hours at their pro rata rate on December 1, 1945, for having been changed from one shift to another, under the current collective agreement.

EMPLOYEES' STATEMENT OF FACTS: On date of November 27, 1945, a notice was posted in Parsons Enginehouse which read as follows:

**"Parsons, Kansas
November 27, 1945**

BULLETIN No. 76

TO ALL CONCERNED:

Effective seventy-two (72) hours from 4:00 P. M. date, the following jobs in Parsons Enginehouse will be abolished:

1—8:00 A. M. to 4:00 P. M. drill press operator rate 77¢ per hour.

1—8:00 A. M. to 4:00 P. M. Machinist helper rate 77¢ per hour.

The following men will be affected:

Doril Karr
G. L. Coover

(Signed) J. L. Rouch
Enginehouse Foreman."

Prior to the expiration of the above quoted bulletin, management notified the two junior machinist helpers on the first shift, namely: Sidney Fore and G. L. Coover, that at the close of their shift November 30, 1945, they would no longer be needed on the first shift and would have to change to another shift. With these instructions, Fore and Coover advised management they would change to the second shift. Management then notified the two junior machinist helpers on the second shift, namely: Clifford Myers and R. W.

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 filling vacancy created by optional absentee."

May 18, 1943, the organizations proposed certain changes in the agreement rules, effective September 1, 1938, including revision of Rule 10, as follows:

"Employes changed 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."

The proposed rule was rejected by the carrier and the following rule was agreed to, effective January 1, 1945 (fifteen copies of agreement dated December 23, 1944, covering changes in rules agreed to were furnished the Division with our letter of January 31, 1945), and is currently in effect.

"An employe changed from one shift to another will be paid overtime rates for the first shift of each change. An employe 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 employe involved or in the exercise of his seniority."

It should be perfectly clear to this Division, as it is to the carrier, from the record of these negotiations and the contentions of the petitioner, that the petitioner is in fact seeking a change in the rule or an interpretation which would have that effect contrary to the provisions of the amended Railway Labor Act.

Petitioner cites and relies upon Award No. 237, in his letter of March 21, 1947, and Award No. 1161, in his letter of May 27, 1947, carrier's Exhibit A, for support of this claim, but the Division will observe the rule covering changing of shifts involved in those awards is not identical to but distinctly different from the rule involved in this case.

Assuming for the purpose of discussion only and not admitting, but denying that the interpretation of the rule as contended by the petitioner was correct, there were only two positions abolished and two employes directly involved by that action, Karr and Coover, the former exercising his seniority on the same shift and the latter exercising his seniority on the second shift. All other changes were the result of Karr and Coover exercising their seniority. Under these circumstances, the employes involved and affected were not required or compelled either by the carrier or the agreement rules to place themselves in the manner they did, but elected to do so of their own accord, and under the rule applicable in this case payment of claims is expressly denied. The exemption or waiver of overtime rates in the rule makes no distinction between increase and decrease in force or otherwise in the exercise of seniority and therefore applies in all instances where employes exercise their seniority, either voluntarily or involuntarily, as provided in the rules of the agreement, and does not require or authorize payment of overtime rates as claimed.

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.

Rule 22 covers reduction of forces.

Rule 10 covers pay for changing shifts.

Rule 13 covers bulletining positions.

In the instant case, the carrier reduced the number of assignments on the first shift causing the claimants in question to change shifts in a manner other than that provided for in Rule 13; therefore, they are entitled to overtime as provided for in Rule 10.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of January, 1948.