

Award No. 1299
Docket No. 1215
2-Tol. Ter.-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 134, RAILWAY EMPLOYES,
DEPARTMENT, A. F. OF L. (Machinists)**

THE TOLEDO TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Machinist Helper William Strub should be paid time and one-half for the first shift worked by him on December 2, 1947, due to changes made by the carrier.

JOINT STATEMENT OF FACTS: Due to certain operating requirements being necessary to change assignments, Bulletin No. 1, dated November 26, 1947, was posted, reading as follows:

"TO ALL CONCERNED:

Due to inclement weather and increased business the running repair forces of the Machinist Craft will be placed on three tricks.

Effective 4:00 A. M., December 2nd, the following running repair jobs will be abolished:

1st Trick

Machinist—8:00 A. M. to 4:00 P. M.

Machinist Helper—8:00 A. M. to 4:00 P. M.

Machinist Helper, pin grease, lubricator and supply man—
8:00 A. M. to 4:00 P. M.

2nd Trick

Machinist—8:00 P. M. to 4:00 A. M.

Machinist Helper—8:00 P. M. to 4:00 A. M.

(Signed) H. G. Dugan
Master Mechanic."

Under the same date, November 26, 1947, Bulletin No. 2 was posted, reading as follows:

of the organization representative that Mr. Strub in being placed on the only assignment on which he held sufficient seniority to hold was assigned thereon in accordance with the first sentence of Rule 11 and was, therefore, entitled to overtime rates for the first shift worked. It was the position of the carrier that in compliance with Rule 14 all of the requirements for changing assignments had been complied with and that Mr. Strub, being the senior unassigned man, was placed in accordance with his seniority and that under the last sentence of Rule 11 he was not entitled to pay at the rate of time and one-half, as he had been placed in accordance with his seniority on the only assignment which he could hold and that Mr. Strub had not been changed from one shift to another, as contemplated in the first sentence of Rule 11 but was placed on his assignment in accordance with Rule 14 and the last sentence of Rule 11.

In conference with the representatives of the organization it was their contention that no junior man to Mr. Strub could be assigned to a job regardless of whether Mr. Strub had bid or not as his seniority entitled him to a regular assignment and their contention for time at time and one-half under Rule 11 is an obvious attempt to collect punitive pay for the junior assigned man who would be placed on the junior assigned position in accordance with his seniority.

The organization representatives further contend that any man not bidding for an assignment, if displaced from his previous assignment, either by seniority or position abolished, could be placed on any assignment at the discretion of the carrier and could be required to stay on that assignment until a position (or positions) was reopened without penalty to the company except for the payment of the first shift at time and one-half as provided in first sentence of Rule 11. It is the further position of the carrier that the first sentence of Rule 11 applies when an employe is moved from his shift to another shift without choice on his part but that when a change of shifts is made and the requirements of Rule 14 are fully complied with, that seniority is exercised by the employe either by bid or by placement in accordance with seniority status on the seniority list in the absence of bid and that no penalty should apply as obviously any other interpretation would be conducive to the junior regular assigned employe affected by the change of assignment to not bid and if displaced from his previously held assignment by seniority, would collect time and one-half for the first shift worked after such change.

The above claim is without merit and should 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 of said dispute were given due notice of hearing thereon.

There is no dispute that the change-over from a two-shift operation to a three-shift operation was decided upon, and put into effect, by the carrier. Strub's bid for assignment to the third shift was futile, because a senior machinist helper expressed a like preference. Strub's placement on the second shift (3:00 P. M. to 11:00 P. M.) was attributable to his standing at the bottom of the seniority list for machinist helpers. His change of work schedule was not a matter of his choice, but was brought about to suit the carrier's convenience. On this account, it cannot be said that Strub exercised his seniority to accomplish the transfer.

The carrier argues that, since Strub worked the second shift under both the two-shift and three-shift arrangements, he cannot contend that he was subject to a shift change within the purview of Rule 11 of the controlling

agreement. It appears rather obvious that, when related to home life and living habits, a shift from 8:00 P. M. to 4:00 A. M., is substantially different than a shift extending from 3:00 P. M. to 11:00 P. M. It is not the numerical sequence of particular shifts that determines whether Rule 11 is applicable. The significant feature is whether or not the two shifts are substantially similar in the light of actual hours worked. That widely varying shifts may have the same numerical sequence, is of no importance in adjudicating this question.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.