

Award No. 1329

Docket No. 1262

2-Erie-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement, Machinist Helper Edward Crow is entitled to be additionally compensated for having been changed from working on the first shift to working on the second shift, on December 9, 1946, and for having been changed from working on the second shift to working on the first shift on December 11, 1946.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed Machinist Helper Edward Crow, hereinafter referred to as the claimant, at Kent, Ohio, with regular assignment of hours from 7 A. M. to 3 P. M., and there he remained until the carrier elected to make a reduction in force and thereby changed the claimant's assignment of hours.

On December 8, the carrier ordered the claimant to report for duty on the 3 P. M. to 11 P. M. shift, beginning on December 9, 1946, and then on the second day of his assignment on this new shift, the carrier likewise ordered the claimant on December 10, to resume working his regular assignment from 7 A. M. to 3 P. M., beginning with December 11, 1946.

The claimant was paid straight time for having worked from 3 P. M. to 11 P. M. on December 9, 1946, and for having worked from 7 A. M. to 3 P. M. on December 11, 1946, and to date the carrier has declined to compensate this claimant at overtime rates for each of these changes of shifts.

The agreement, effective as to rates of pay, July 1, 1942, and effective as to rules, August 1, 1942, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that this dispute stems from the fact that the carrier made the election to reduce forces. The claimant was not subject to be, and was not furloughed, but under the terms of Rule 20 (a), in lieu of operating with the claimant on the first shift assignment, the carrier decided that he would have to work on another shift, and so changed the claimant's assignment from the 7 A. M. shift ending with December 8, to the 3 P. M. shift, beginning with December 9, 1946.

The carrier was apparently satisfied with this aforementioned arrangement for only two days, and thereupon made the election to restore forces under the terms of Rule 20 (c). Consequently, the carrier decided on December 10 that the services of one additional machinist helper was required on

of the job to which assigned." On many occasions during the years 1923 up to now there have been force reductions and re-adjustments and in no case has the Erie Rule No. 6 been interpreted by any Board of Jurisdiction to require the payment of time and one-half to an employe such as Crow who made his own selection of the job that his seniority permitted him to work.

When the agreement of August 1, 1942, was negotiated, Rule No. 38, the Displacement Rule, was negotiated into the agreement for the express purpose of demonstrating more clearly the right of men displaced so that in the condition cited an employe affected could exercise his seniority rights and select the job that he wished to work in accordance with his seniority. Otherwise, it follows that if the railroad under Rule 20(a) had the exclusive right to tell a man where he was to work irrespective of seniority, then in many cases an employe could be assigned by the railroad so that there could be no question about his status. We, however, do not believe that such was the intent of the rules, and that under Rule 38 a definite right is granted an employe to select a job if he is affected by the abolishing of positions, etc. This is exactly what happened in the Kent case where Crow was affected because of stepped-up Machinist Russie as a result of his position abolished returned to the ranks of the machinist helpers and exercised his seniority rights under Rule 38 as the senior machinist helper.

We feel that this claim is unsupported by rules and practices and that it should be denied for the following reasons:

1. Based on the evidence of record December 9, Crow worked the second trick 3 P. M. to 11 P. M. as a result of his own action in selecting that trick and not because of being ordered or required to work that trick by the railroad.

2. Rule No. 6 which is cited by the organization pays overtime rates for first shift of each change only when employes are ordered or required to change by the railroad. Rule 6 did not apply in this case because the change December 9 was the result of Crow exercising his seniority rights under Rule 38 and selecting Machinist Helper Young's job on the second trick, and was not the result of orders by the railroad.

3. The claim of December 11 is not supported by rule or practice because on that date Crow being the senior machinist helper selected the day position that was left vacant by Russie when Russie selected machinist helper position that was restored in the roundhouse machine shop on that day.

4. The awards cited, Nos. 466, 467 and 1161, are not applicable in this case in question because those awards are based on different rules and under different circumstances and accordingly should not be used as controlling in the claim in this docket.

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 waived right of appearance at hearing thereon.

While it is true, as the carrier contends, that the language of Rule 6, governing overtime in case of changing shifts, differs from that contained in the rules before the Division in previous cases subject to Awards 237, 466, 467 and 1161, we see no essential difference in intent or purpose between the several forms of the rule. In all cases cited and examined, including the instant case, the first clause clearly relates to mandatory actions of the carrier and the second and excepting clause we find was intended and does relate to changes in shifts arising out of the ordinary, uncoerced actions of employes in exercising rights of seniority, usually to obtain positions of their

choice, or in some cases examined, the voluntary exchange of shifts with a fellow employe to convenience such employe.

Here the chain of events was instituted through the initial action of the carrier in reducing forces. Exercise of seniority under such circumstances, we find to be compulsive rather than voluntary in nature and the case governed by the first clause of Rule 6.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.