Award No. 1392

Docket No. 1317

2-L&N-FO-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Firemen and Oilers)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the current agreement was violated when the carrier assigned an extra Class "B" laborer to operate the coal hoist from 3:30 P.M. to 11:30 P.M. on May 24, June 1, and 2, 1949.

2—That accordingly the carrier be ordered to additionally compensate Coal Hoist Engineer Allen McCreary in the amount of eight (8) hours at the time and one-half rate on each of the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: At Corbin, Kentucky, the carrier maintains only one coal hoist engineer, namely: Allen McCreary, hereinafter referred to as the Claimant, with assigned duties of unloading and storing coal during the hours from 7:30 A.M. to 3:30 P.M.

The carrier also maintains a mechanical coaling station at the point which became inoperative on May 24, June 1 and 2, 1949, and until same was repaired it was necessary to use this aforementioned coal hoist to coal-up engines on these dates from 7:30 A.M. to 11:30 P.M., or sixteen (16) continuous hours. However the claimant was ordered to quit work at the end of the shift, 3:30 P.M., with the result that carrier substituted for him a Class "B" laborer to operate the coal hoist from 3:30 P.M. to 11:30 P.M. on each of the aforementioned dates.

This dispute has been handled with the carrier officers from the bottom to the top, with the result that the highest designated officer has declined to adjust it. The agreement effective June 1, 1942, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that there is nothing in Rule 1, Scope A, or elsewhere in the current agreement, which authorizes the carrier to use an extra Class "B" laborer as coal hoist engineer on the dates in question or any other employe on that work than coal hoist engineers first out on Group "A" overtime board, which in the instant case was the claimant since he is the only employe assigned as such within the provisions of Rule 5 (d), Item 15, reading:

Mr. McCreary, already having a regular assignment as coal hoist engineer, had no agreement rights to this vacancy and accordingly Shirley Hampton, who had coal hoist engineer senority but at that time was working in a lower classification, was assigned to it.

In further support of our position we call the Board's attention to the provisions of Rule 11 of the effective agreement, from which we quote:

> "New positions or vacancies that are expected to last more than thirty days will be bulletined within two days prior to or after the date of creating new positions or vacancies . . . Men on second and third (night) shifts will be given preference on day jobs, if qualified and senior . . . "

Knowing that the position would last but a short time, there was no need to bulletin it, consequently it was considered as a temporary vacancy, bringing it within the provisions of Rule 18 (a).

Rule 13 (c) of the agreement provides:

> "A general notice will be posted four days in advance of effective time of abolishment of regular assigned positions. Copy of notice to be given the Local Chairman. This will not apply in case of an Act of Providence."

It was not necessary that the position of coal hoist engineer, 3:00 P.M. to 11:00 P.M., be abolished by bulletin notice for the reason that it was not a regularly assigned position.

Rule 10 (e) provides:

> "Employes in Group 'B' will not establish seniority in Group 'A' while protecting temporary vacancies in the latter group; except when assigned to temporary vacancy lasting 100 consecutive working days, provided such vacancy was advertised in accordance with Rule 18 (a). When assigned by bulletin to regular vacancy in Group 'A' seniority in that group will date from the date of such assignment."

The foregoing further establishes the fact that the carrier acted within its rights in using Mr. Hampton on the position in question, in view of which protest of the employes 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 employes 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.

Claimant was the only coal hoist engineer regularly assigned to the work of loading and unloading sand, and unloading coal from tenders of shopped locomotives, 7:00 A.M. to 3:00 P.M. On the dates in question the mechanical coaling station, "operators of which do not handle coal hoist in connection with their work," was undergoing repairs due to breakdown. Thus it was necessary to place coal on locomotive tenders for outgoing trips with the coal hoist which claimant operated on the first shift. In that situation the

carrier established a temporary position of coal hoist engineer on second shift, 3:00 P.M. to 11:00 P.M., and a coal hoist engineer with seniority as such in Class A from August 16, 1947, who was then working as "an extra Class 'B' laborer," was assigned to such shift within the purview of and as authorized by Rule 18 (a). For the reasons heretofore stated the claim should be and is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1950.