

Award No. 1856

Docket No. 1730

2-SP(PL)-BM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement 7 Boilermakers and 4 Boilermaker Helpers were not properly compensated at the overtime rates when they were changed from working on the second shift Friday, April 3rd, 1953, to working on the first shift Monday, April 6th, 1953.

2. That accordingly the Carrier be ordered to additionally compensate Boilermakers, namely:

P. A. Barela Jr.
G. G. Carrasco
W. C. McGaughey
L. T. McQuillen
C. Najera
L. C. Stanton
E. Velasquez

and Boilermaker Helpers, namely:

J. A. Lopez
M. Parra Jr.
B. S. Rose
D. M. Wicks

each in the amount of 4 hours for their first shift on the new shift assignment from 7:00 A.M. to 3:30 P. M., Monday, April 6th, 1953.

EMPLOYEES' STATEMENT OF FACTS: At El Paso, Texas, general shops the carrier's superintendent of shops made the election to abolish the positions of Boilermakers P. A. Barela Jr., G. G. Carrasco, W. C. McGaughey, L. T. McQuillen, C. Najera, L. C. Stanton and E. Velasquez, and Boilermaker Helpers J. A. Lopez, M. Parra Jr., B. S. Rose and D. M. Wicks, hereinafter referred to as the claimants on the 3:30 P. M. to 12:00 midnight shift effective at the close of their shift Friday, April 3, 1953 and this is affirmed by

“BULLETINS—NEW JOBS AND VACANCIES

“Rule 19. (a) New jobs and temporary or permanent vacancies occurring in regular jobs will be bulletined for seven (7) days (except if known to be of less than thirty (30) days’ duration will be filled in accordance with Rule 20). Applications must be made in writing to official in charge, a copy to be given local chairman by applicant. Senior employes making applications will be assigned and will (except as provided for in Paragraph (b) of this rule), lose his right to the job he left. If after fair trial he fails to qualify, he will take whatever position may be open in his craft and class, and next senior applicant will be assigned and given opportunity to qualify. If no bids are received, the junior qualified employe may be assigned in cooperation with the local committee.”

the claimants were jointly selected for assignment to the bulletined positions by cooperation of local management and the local boilermakers’ committee; in other words, the seniority rights of the claimants were exercised in accordance with the last sentence of Rule 19(a), quoted above.

The Division will note that Rule 19(a) specifically provides that eligible employes may be assigned to bulletined positions under circumstances existing in the instant case by cooperation of the management with the local committee. Such action obviously constitutes a proper exercise of seniority in behalf of employes affected. Rule 12, likewise, specifically provides that no penalty is applicable when shifts are changed in the exercise of seniority. There are no provisions in either of those rules nor in any other rule of the current agreement which provide that employes must personally exercise their seniority. Whether the exercise of seniority rights is of an individual’s own volition or results from circumstances beyond his control is immaterial. The fact that the employes in this case were transferred in the exercise of seniority rights is controlling. In this connection, the Division’s attention is directed to its Award No. 1546.

Attention is directed to the fact that the situation in this case was handled in such a manner that the employes affected lost no time whatever. The bulletin advertising the new jobs was issued so that it expired on the same date that the positions formerly held by the claimants were abolished.

It is carrier’s position that under the language of Rules 12 and 19(a), employes may be transferred by the proper exercise of seniority rights as in this case without penalty to the company in the payment of overtime. Rules 12 and 19 have been consistently applied as indicated above under the current controlling agreement. It is carrier’s further position that the claim in this docket is without merit and must be denied. We request that the Board so hold.

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.

On March 27, 1953 carrier bulletined new positions on first shift for nine boilermakers and four boilermaker helpers at its El Paso Shops. Prescribed bulletin period expired as of Friday, April 3 with no applications for these positions having been received. On April 1, 1953 carrier issued notice that effective as of close of shift on April 3 the second shift positions held by nine

boilermakers and four boilermaker helpers (including all eleven claimants) were abolished. All the present claimants were then assigned in accordance with Rule 19 to the new first shift positions, effective as of Monday, April 6.

Petitioning organization contends that under Rule 12 of the applicable agreement the claimants (seven designated boilermakers and four designated boilermaker helpers) should have been compensated at their overtime rates for the first day of their new shift, instead of at straight time, and that each of them should thus receive four hours' additional pay. Carrier denies such additional pay is due. It asserts that no bids having been received for the posted positions, it assigned claimants to said positions "in co-operation with the local committee" per Rule 19, that claimants' shift was "changed in the exercise of seniority" per Rule 12, and thus the Rule 12 overtime requirement did not apply.

It is clear from the foregoing review of the factual background that in creating the specified positions on first shift and abolishing the same positions on second shift, the carrier simply transferred these positions from one shift to another. And since claimants did not voluntarily move with the positions, carrier changed these employees from one shift to another.

Rule 12 states in part: "Employees changed from one shift to another will be paid overtime rates for the first shift of each change. . . . This will not apply when shifts are changed in the exercise of seniority or exchanged at the request of the employees involved."

Rule 19 sets forth the agreement's provisions with respect to filling new jobs and vacancies, the last sentence of paragraph (a) thereof reading: "If no bids are received, the junior qualified employee may be assigned in co-operation with the local committee." The newly created first shift positions were filled in this fashion.

But this is not a change of shifts "in the exercise of seniority" in the sense intended by the Rule 12 proviso previously quoted. Seniority status accrues to the employee, not to the carrier. The Rule 12 use of the phrase "exercise seniority" clearly implies that the employee initiates the action. In the instant case the claimants did not take the initiative. And there is no evidence of record that they authorized their duly designated representative to do so, or that said representative initiated such action in their behalf.

The clear intent of the quoted clause in Rule 19 is that in the making of assignments to positions for which no bids have been received, the local committee is permitted to participate for the purpose of ensuring that such assignments are filled on an equitable basis and in accordance with the agreement. This clause contains no reference to the "exercise of seniority" as above interpreted, and we are not entitled to read these words into the clause.

In view of the foregoing, we are of the opinion and find that in accordance with Rule 12, claimants should have been compensated at overtime rates for their first shift on the new shift assignment from 7:00 A. M. to 3:30 P. M. on Monday, April 6, 1953.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1954.