

Award No. 2296

Docket No. 2102

2-MP-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L, (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement eleven (11) Machinists, one (1) Class B Machinist and fourteen (14) Machinist Helpers were not properly compensated at the overtime rates in accordance with rule 10 of controlling Agreement when they were changed from working on the second shift on March 10, 1954 to working on a three shift arrangement on March 11, 1954.

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

Machinists

R. L. Wiggins
W. W. Walker
J. P. Plant
R. L. Greenwood
C. Moon
H. C. Campbell
C. Fields
V. J. Hardcastle
W. M. Davis
A. R. Kinsey
J. J. Reed

"B" Machinists

Ben Owens

Machinist Helpers

Pompie Carter
Burlie Mitchell
H. McDade
A. Hogan
Jake Jones
J. N. Thornton
Burl Coulter
Henry Melvin
M. Love
Bland Coulter
J. G. Via
W. E. Clements
T. M. Scarbrough
Sam Miller

each in the amount of four (4) hours for their first shift on their respective new shift assignments on March 11, 1954.

EMPLOYEES' STATEMENT OF FACTS: For sometime prior to March 10, 1954, the carrier at their North Little Rock, Arkansas roundhouse did have assigned a force of machinists, B machinists and machinists helpers

without penalty to the Company in the payment of overtime for such transfer."

In that case an employe displaced by reason of the abolishment of his position exercised his displacement rights on a junior employe on a different shift.

Your Board, with the assistance of Referee Wenke, denied the claim and held as follows:

"However, Rule 8 expressly exempts the payment of overtime when the transfer from one shift to another is made by an employe 'in the exercise of seniority rights.' This specific exemption is in no way qualified as to the act being voluntary or involuntary. In view thereof we find it expressly covers the situation of the claimants. Therefore we find this claim to be without merit."

Again in Award No. 1816, your Board had before it a request for the time and one-half rate for the first shift worked on new positions. In that case the claimants chose not to bid on new positions advertised by bulletin, whereupon the carrier assigned them in accordance with their seniority. Rule 2 (m) there involved contained the following language in the third sentence:

"This will not apply when shifts are exchanged at the request of the employe involved, or in the exercise of his seniority."

Your Board, with the assistance of Referee Carter, denied the claim and held as follows:

"We point out that the change in shift rule does not apply in this case. There was no change of shifts within the meaning of the rule. The positions of these claimants in the erecting shops were abolished. There were no shifts on the abolished positions remaining to which a change could be made. New positions were bulletined upon which claimants could bid. If they had a choice of positions, they should have bid. Upon failure to bid, carrier could assign them to unfilled positions in accordance with their seniority which the carrier did. They assumed the shift to which they voluntarily permitted themselves to be assigned—they did not change from one shift to another within the meaning of the first sentence of Rule 2 (m). They were changed to a new shift on a new position to which they were entitled by seniority. Claimants cannot profit in such a situation as we have here by the expedient of failing to bid on new positions and accepting that to which their seniority entitles them. Award 1546."

This claim is without the support of any rules of the shop crafts agreement as has been shown, and is contrary to the practice on this property during the life of the current agreement as well as all preceding agreements as far back as 1922. Your Board is familiar with the effects of past practice upon the interpretation of provisions of collective bargaining agreements which have survived numerous revisions without change in the rule or the method of payment under the rule. There is no basis for his claim and it should therefore 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 to said dispute were given due notice of hearing thereon.

Immediately prior to March 10, 1954, carrier had a force of Machinists, B Machinists and Machinist's Helpers assigned at the roundhouse at Little Rock, Arkansas. A number of them, including these claimants, were working the second shift 8:00 P.M. to 4:30 A.M., with a 30 minute lunch period. On March 8, 1954, carrier gave notice by bulletin that all second shift positions were abolished effective March 10, 1954. On the latter date, carrier placed all assignments at the roundhouse on a three shift basis and rebulletined all of claimants assignments. As a result, the claimants were assigned to new positions with a different shift assignment. It is the contention of the claimants that they were required by the carrier to change shifts within the meaning of Rule 10, current agreement, which provides:

"Employees changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply when returning to their regular shift nor when shifts are exchanged at the request of employees involved or in the exercise of their seniority rights."

It is the general rule that an employee, whose position is abolished and who bids in a new bulletined position, is not entitled to time and one-half pay for working the first shift of his new position under a rule such as we have before us. Awards 1546, 1816.

On November 27, 1940, however, the parties to this dispute entered into a written agreement interpreting Rule 10. In part, this interpretation provides:

"(a) In the application of that part of the rule reading:

'Employees changed from one shift to another will be paid overtime rates for the first shift of each change.'

applies when employees are changed from one shift to another by the Management and will likewise apply when following rearrangement of force: in force reductions when employees are required to change shifts from day to night, or vice versa, by reason of having been disturbed on their regular assignment and possessing sufficient seniority to be not affected by being displaced from service. * * *"

In the case before us, the carrier decided to set up a three shift operation. It did not disturb first shift assignments. All positions on the second shift were abolished and the positions were re-established on second and third shifts. This is a rearrangement of work which falls within the words "and will likewise apply when following rearrangement of force", contained in the agreed upon interpretation. We necessarily conclude that the agreed upon interpretation gave Rule 10 a meaning which it otherwise did not have and that employees under it are entitled to the time and one-half rate when shifts are changed in the rearranging of forces, in force reductions and where Management changes them from one shift to another for its own purposes as provided by the agreed upon interpretation of November 27, 1940.

The record shows that claimants W. W. Walker and J. G. Via were able, because of their seniority, to displace junior employees on the first shift. Since the first shift was not disturbed by the rearrangement of forces, it is clear that these two employees exercised their seniority in a situation different than contemplated by (e) in the agreed upon interpretation. The change of shift was due solely to their exercise of seniority and they are

not entitled to time and one-half for the first shift worked after they displaced on the first shift.

AWARD

Claim sustained as to all claimants except W. W. Walker and J. G. Via.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.