

Award No. 2488
Docket No. 2129
2-CMStP&P-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement Machinists William Anderson and Roy Brandt, and Machinist Helper Victor Gustafson were improperly compensated for changing from one shift to another on Feb. 5, 1955.

(2) That accordingly the Carrier be ordered to additionally compensate the aforesaid Claimants in the amount of 4 hours pay at the straight time rate.

EMPLOYEES' STATEMENT OF FACTS: Machinists William Anderson, Roy Brandt and Machinist Helper Victor Gustafson (hereinafter referred to as the claimant) are employed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the carrier) at Minneapolis, Minn. The claimants hold seniority on the January 1, 1955 roster of machinists and machinist helpers at Minneapolis, Minn.

The carrier made the election to reduce the forces at Minneapolis roundhouse by notice dated January 31, 1955, a copy of which is submitted herewith and identified as Exhibit A. The claimants assigned to the 7:00 A.M. to 3:30 P.M. shift were involved, and as a result of the carrier's action in electing to reduce the forces of machinists and machinist helpers, they were forced to work on the 9:00 P.M. to 5:30 A.M. shift beginning Feb. 5, 1955.

The agreement effective Sept. 1, 1949 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that Rule 27 (a), which reads as following:

"When it becomes necessary to reduce expenses, reduction will be accomplished by reducing forces at any point, shop, department or subdivision thereof, seniority as per Rule 31 to govern; the em-

"Employees changed from one shift to another will be paid time and one-half rate for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred. This rule will not apply when shifts are changed in exercise of seniority or at employee's own request."

The employees have presented no contention in support of this claim other than the first sentence of Rule 13 (a). They have entirely ignored the last sentence of that rule and we submit that all portions of the rule are equally important. In other words, regardless of the fact that the positions to which the claimants were assigned were bulletined in accordance with the provisions of Rule 19 (a) and regardless of the fact that the claimants requested the positions, yet the employees contend they should have been paid an additional four hours. Under the circumstances prevailing in this case the additional payment claimed for changing shifts is not proper in view of the last sentence of Rule 13 (a).

The employees have cited Award 1959. While we cannot agree with the conclusion reached in that award, nevertheless the circumstances in the case covered thereby differ from those which we have here. The positions to which the three claimants were assigned had been bulletined. They made request for those positions. Only by reason of their request were they assigned to those positions. For instance, had not Employee Anderson requested machinist position No. 1, Junior Machinist Lundquist, who also made application for the position, would have been assigned thereto. They therefore exercised seniority to the positions. We would direct attention to Award 1949 and although the "changing shifts" claim was sustained, it will be noted that a different result would have obtained had the claimant in that case made application for the bulletined position. The following is quoted from the findings in that award:

"The case would be different if he had bid upon the bulletin position to which he was later instructed to fill."

Each of the three claimants exercised seniority to bulletined positions and were assigned to those positions by reason of their request for same. They were not required to change shifts as contemplated by the first sentence of Rule 13 (a) and in accordance with the provisions of the last sentence of Rule 13 (a) the additional payment claimed is not allowable. There is no basis for the claim and the carrier respectfully requests that it 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.

This claim for additional pay must be decided by determining whether the claimants "were changed in exercise of seniority * * * at * * * own request" or whether they were "changed from one shift to another," in other words "assigned," as a necessary concomitant of the reduction in force.

There is clear evidence in the record that one of the claimants (Brandt) did not get the position of his choice, but "was assigned to a machinist's position." The rule requires that he be paid.

As to claimant Machinist Anderson the record shows that he "desired that particular position and * * * was assigned to the position of his

choice." "Claimant Gustafson desired a * * * helper position * * * and * * * was assigned to that position."

The initial cause resulting in these effects was the carrier's managerial determination to reduce forces. The men laid off had no choice except the narrow one afforded by the carriers bulletining of certain positions. The choice made by the men was to take whatever was available. They chose to be not laid off.

Parties have cited various awards, some denying and some sustaining, wherein similar or identical rules have been applied to facts somewhat like those presented here. The cases differ and are distinguishable in some particulars. Under the present facts we are disposed to follow Award 1959 in which the facts most nearly resemble those present here.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.