Award No. 2615
Docket No. 2421
2-SOU-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the provisions of the current agreement, particularly Rule 13 thereof, Carmen R. L. Williams, L. M. Quinn, C. E. Kanipe and O. M. Haley are each entitled to be additionally compensated for four hours at the straight time rate of pay for October 26, 1955.

EMPLOYES' STATEMENT OF FACTS: R. L. Williams, L. M. Quinn, C. E. Kanipe and O. M. Haley, hereinafter referred to as the claimants, were regularly assigned as freight carmen at the carrier's Hayne Car Shop, Spartanburg, South Carolina, to the first shift 7:30 A.M. to 4:00 P.M. with thirty minutes for lunch Monday through Friday with Saturday and Sunday as rest days until the close of their shift October 25, 1955 when, as the result of Bulletin No. FS-44, copy of which is submitted herewith and identified as Exhibit A, the carrier elected to abolish their positions.

On the same date, October 25, 1955, the carrier posted Bulletin No. FS-45, copy of which is submitted herewith and identified as Exhibit B, advertising five positions on the 4 P.M. to 12 Midnight shift with Monday through Friday as work days effective October 26, 1955.

Claimants, because of their lesser seniority, were unable to place themselves on the 7:30 A.M. to 4 P.M. shift and on October 26, 1955 they were assigned on four of the positions advertised in Bulletin No. FS-45.

On October 31, 1955, carrier posted Bulletin FS-45A, copy of which is submitted herewith and identified as Exhibit C, stating that no bids had been received on the five positions advertised in Bulletin FS-45 and that claimants "in exercising their seniority the following employees have placed themselves on four of these positions:"

Claimants are not entitled to payment under the provisions of Rule 18 (a). Said rule, by its very wording, leaves no doubt as to the fact that the rule does not cover situations where the force is reduced and the employes take new regular assignments. Rule 18 (a) contemplates that the change made be of a temporary nature and not one of a permanent nature. The rule contemplates that an employe will be returned to his regular assignment. In the case before us the claimants could not be returned to their regular assignments because they received new regular assignments, their former regular assignments having been abolished due to a force reduction."

Thus, under the principles of prior awards, claim cannot be sustained.

CONCLUSION

Carrier has shown that:

(a) There was no change of shifts within the meaning of Rule 13, as employes were **not** transferred by the management from one shift to another.

(b) Rule 13 does **not** cover situations where, as here, the force is adjusted and affected employes take new regular assignments, and the brotherhood has so conceded in presenting claim only on behalf of four of the five affected employes.

(c) Claim is not supported by the effective agreement.

(d) Prior Board awards have denied similar claims.

Under the circumstances, the Board cannot do other than make a denial award.

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.

The four claimants were regularly assigned as freight carmen on the first shift. On October 25, 1955, carrier posted one bulletin abolishing their positions and another bulletin advertising five positions on the second shift. Claimants, because of their lesser seniority, were unable to place themselves on their old shift, and on October 26, 1955 they were assigned to four of the positions advertised on the second shift. The fifth carman placed himself on the second shift in the voluntary exercise of his seniority rights. No claim was asserted upon his behalf.

On October 31, following, carrier posted a bulletin stating that no bids had been received on the five positions advertised and "in exercising their seniority the following employes have placed themselves on four of these positions." The names of claimants followed.

The organization relies on Rule 13, which provides, in part, as follows:

> "Employees transferring from one shift to another will be paid overtime rates for the first day or night of the new shift. This does not apply to employees who transfer at their own request."

Claimants contend that they did not transfer from one shift to another at their own request but such was instituted by the carrier. Therefore, they assert, they were entitled to additional compensation for four hours at straight time rate of pay for the first day assigned to the new shift, October 26, representing the difference between the straight time and overtime rates for that day.

Carrier contends its actions were dictated by the provisions of the readjustment in forces memorandum; that if claimants had exercised their seniority rights and bid on the jobs they would not be entitled to premium pay and that it would be inequitable to allow them to avoid this result by refusal to exercise their seniority rights and compelling the carrier to assign them to their positions. In short, "that a purpose which cannot be accomplished directly may not be accomplished indirectly."

We feel that the distinguishing feature in this submission is the fact that here, as in the submission subject of Award No. 1816, the positions initially occupied by Claimants were abolished and re-bulletined. Authority for such actions on part of the carrier is found in the Readjustment of Forces Agreement. This meets the objection expressed in the Dissent of Labor Members to the Award No. 2067, where they point out that authority to abolish positions was not contained in the Agreement there involved. This is not the case of a temporary transfer between existing positions made at the instigation of and to convenience the carrier to which we have found the transfer rule applicable. Here, following abolishment and rebulletining of positions, the seniority rules and not the discretion of management is brought into play. Whether the employes took affirmative steps to place themselves in the new positions or not, the placement was effected through the operation of the seniority rules. As we held in Award No. 1816, the transfer rule does not apply in such instances, and we so hold here.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September, 1957.

DISSENT TO AWARD No. 2615

First, in order to set the record straight we wish to point out that the majority's finding that "the positions initially occupied by claimants were abolished and re-bulletined" is not in accord with the facts. It is true that the positions were abolished but they were not re-bulletined.

It is likewise impossible to understand why the majority should state that the Readjustment of Forces Agreement "meets the objection expressed

in the Dissent of Labor Members to the Award No. 2067, where they point out that authority to abolish positions was not contained in the Agreement there involved," inasmuch as abolishment of positions was not the subject of the instant dispute and no contention was made that the carrier did or did not have authority to abolish positions.

The majority's contentions that "the seniority rules and not the discretion of management is brought into play" is refuted by the record in this case. First, the record shows that the claimants positions were abolished on October 25, 1955. Second, the carrier concedes that although the claimants elected not to bid on jobs established under the bulletin posted on that date they were assigned to the bulletined positions under agreement rules on October 26, 1955. Thus the transfer of these claimants to the new positions was not effected at the employes' request and they should therefore have been compensated in accordance with that part of Rule 13 reading:

> "Employes transferring from one shift to another will be paid overtime rates for the first day or night of the new shift . . ."

Award No. 1816, cited by the majority in an attempt to justify the present holding, is not in point since it involved a different rule under a different agreement.

R. W. Blake
C. E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink