Award No. 3103
Docket No. 2996
2-CRI&P-F&O-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Firemen and Oilers)

CHICAGO ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Stationary Engineer Chas. DeMeyer, employed as such for more than 28 years in Carrier's Power Plant at Silvis, Illinois, was deprived of his seniority and service rights, when effective with April 23, 1957, the Carrier arbitrarily abolished his regular assignment of regular relief Engineer with assigned work week of Sunday and Monday 7 . M. to 3 P. M., Tuesday and Wednesday 3 P. M. to 11 P. M. and Thursday 11 P. M. to 7 A. M., Friday and Saturday rest days, and readvertised it with Sunday and Monday 7 A. M. to 3 P. M., Tuesday 3 P. M. to 11 P. M. and Wednesday and Thursday 11 P. M. to 7 A. M.—rest days Friday and Saturday. Thereby substituting the 11 P. M. to 7 A. M. shift for the regular 3 P. M. to 11 P. M. shift each Wednesday resulting in a reduction of pay for the regular relief Engineer in his assignment of regular relief engineer and causing him to exercise his seniority at a further loss of wages on another position.

2. That accordingly the Carrier be ordered to restore the regular Relief Engineer's position with its original shift assignments of Sunday and Monday 7 A. M. to 3 P. M., Tuesday and Wednesday 3 P. M. to 11 P. M., Thursday 11 P. M. to 7 A. M.—rest days of Friday and Saturday, and to compensate Stationary Engineer DeMeyer for all monetary losses incurred by him as the result of the abolishment of said position effective April 23, 1957.

EMPLOYES' STATEMENT OF FACTS: Immediately prior to September 1, 1949, the carrier maintained 3 assignments of stationary engineers, one on each shift 7 days per week in their Silvis Power Plant.

Effective with Sept. 1, 1949, and in accordance with Paragraph a of Rule 1, these three 7-day assignments were reduced to five days per week with the following assigned work weeks and rest days.

The seniority rules were not violated in the instant case—a position with new alignment of shifts was established and the successful bidder desiring it was assigned thereto. The claimant also had opportunity to bid for the position.

The employes admit that the carrier has a right to establish relief position in following statement in their letter of April 25, 1957:

> "The employes do not question the carriers authority or prerogative to establish a relief job to fill this one rest day on the 3rd shift engineers position each Wed. and use such an occupant to relieve employes in other classes on other days or fill out his work week as a laborer."

The employes rely on Memo. 6 of agreement of August 1, 1955 (reprinted) but we submit they can show no violation thereof. There is nothing in the agreement prohibiting changing a relief set-up of the days or shifts contemplated in the five-day cycle. Their main complaint without proof is that the change had the effect of "causing him personal inconvenience great mental anguish and physical distress, interferring with his established social life, etc." Of course, these are not covered by the agreement and no where in this case can the employes show the claimant was deprived of his seniority or employment. His seniority, which was not, of course, taken from him, controls the position to which entitled, and the employes under the circumstances, are unable to make a case for monetary loss in connection therewith.

Under the facts in this case, we respectfully request declination of the claim as without merit.

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.

Parties to said dispute were given due notice of hearing thereon.

The change effected by the abolishment and rebulletining of the claimant's job was only as to one day of his work week. Under the new schedule he worked on all the same tricks as theretofore except the Wednesday 3-11 turn which was changed to Wednesday 11-7. The question is whether or not this action violated the rules.

The organization contends that Memo. 6 and the seniority and service rights of the claimant were violated. The carrier urges that the provisions of Rule 2(e) "Regular Relief Assignments", particularly the phrase, "Assignments for regular relief positions may on different days include different starting times", grants carrier the right to establish or reestablish schedules such as in the present case.

We find no violation of Memo. 6 and although the net result of the present change affected the claimant's earnings, we find that the authority for the carrier's action is spelled out in Rule 2(e).

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of February, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3103

The majority in denying this claim ignores the seniority and service rights of the claimant as established pursuant to the controlling agreement.

The establishment of regular relief positions under the 40-Hour Week Agreement did not reduce, restrict or change in any manner the protective provisions of the Seniority Rules as provided in the Agreement; however, this Award upholds the carrier in its arbitrary invasion of the current seniority and service rights as guaranteed by the Agreement.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner