

**Award No. 3705
Docket No. 3211
2-MP-CM-'61**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY — Gulf District

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, violated the controlling agreement, particularly Rule 10 thereof, when it refused to pay Carman E. D. Kiser the overtime rate for change of shift on September 10, 1957.

2. That accordingly the Carrier be ordered to additionally compensate the Claimant, E. D. Kiser, in the amount of four (4) hours at the pro rata rate for the date of September 10, 1957, account of said change of shift.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 10, 1957 a bulletin was posted in the car shop at Palestine, Texas abolishing the position held in the air room at that point by Carman W. C. Potter who exercised his seniority and displaced junior Carman J. W. Nicholson who held position of car inspector in the train yard at Palestine, Carman Nicholson in turn displaced claimant who also held position of car inspector in train yard at Palestine, hours 3:00 P. M. to 11:00 P. M.

As a consequence of being displaced from his position as car inspector on the 3:00 P. M. to 11:00 P. M. shift in the train yard, claimant was forced to change to the 7:00 A. M. to 12:00 noon; 1:00 P. M. to 4:00 P. M. shift on the repair track at that point. He did not displace anyone on the repair track.

This matter has been handled in accordance with the agreement up to and including the highest officer of the carrier designated to handle such matters with the result that he has declined to adjust it.

The agreement between former System Federation No. 14 (Now No. 2) and the former International Great Northern Railroad (Now M.P.) dated September 1, 1949, as subsequently amended. is controlling.

In discussing the instant dispute on the property the employes have cited and relied upon Second Division Award No. 2488 involving a change of shift dispute between System Federation No. 76 (Machinists) and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and have attempted to ignore completely Awards No. 2224 and No. 2225 between the same parties as are involved in the instant dispute.

Your Board has held in numerous awards that it should not overturn previous awards between the same parties unless there is clear and compelling evidence that the prior awards sought to be overturned are patently erroneous. There has been no evidence produced by the employes during the handling of the instant dispute on the property upon which to base any belief that Awards Nos. 2224 and No. 2225 issued by your Board with the assistance of Judge Edward F. Carter are erroneous or ill-considered. Furthermore, the awards referred to and cited in this submission clearly support the decisions contained in Awards No. 2224 and No. 2225 between the same parties as here. Therefore to now follow Award No. 2488 rendered in disposition of a dispute on another railroad where different rules and practices are involved would have an unsettling effect upon the relationship between the parties here involved and instead of disposing of these disputes would provoke additional ones on this property as well as on other railroads where similar awards have been rendered. Furthermore, Award No. 2488 is clearly contrary to the weight of authority and does not appear to be supported by clear and logical findings or conclusions. Its value as a precedent is no better than the faulty and illogical analysis upon which it would appear to be based.

For the reasons fully set forth in this submission, the rules relied upon and the interpretation already rendered by your Board on this as well as other properties, there can be no basis for the instant claim and it must 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.

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

On September 10, 1957 Carman Potter's position at Palestine, Texas was abolished. He exercised his seniority and displaced Carman Nicholson at that point. In turn Nicholson displaced Claimant and Claimant took a position on the repair track at Palestine which did not involve displacement.

The employes maintain that Claimant should be paid overtime for his first shift on the repair track, on the theory that he was changed from one shift to another within the meaning of Rule 10 of the applicable Agreement.

Rule 10 provides:

"Employes 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 employes involved or in the exercise of their seniority rights.”

It is noted that the penalty does not apply when shifts are exchanged in the exercise of seniority rights. We think this exception is applicable to the factual situation presented in this record. When Claimant was displaced, he was free to exercise his seniority to secure the best position available to him. The exception mentioned in Rule 10 is not limited to a voluntary exercise of seniority. It is equally applicable to an involuntary exercise of such right. See Award 1546. In electing to take the position on the repair track, in preference to going on furlough, the Claimant exercised his seniority within the spirit of Rule 10. In this situation the Claimant gained an opportunity of employment through his exercise of seniority. See Award 2224.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3705

Claimant Kiser did not bid on the position on the repair track at Palestine. The carrier's acknowledgment of Kiser's seniority in placing him on that job is not equivalent of Kiser's exercising seniority to fill the position. Rule 10 is for the purpose of protecting a worker when his shift is changed by an act of the carrier. The abolishment of a position, the act of the carrier, set in motion displacements down the line, thereby causing Kiser to be changed to another shift; thus the finding of the majority is in error. The claimant should have been compensated for the change in shift as claimed.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink