

Award No. 3710

Docket No. 3609

2-L&N-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That the Carrier was without authority to require Carmen Helpers Alfred L. Martin, Ellis Brown, J. T. Rhoades and D. E. Snellen to appear in its Shop Superintendent's office at Louisville, Kentucky prior to November 10, 1958 without compensation therefor.

(2) That the aforementioned Carmen Helpers were assigned to begin work at 7 A. M. November 10, 1958.

(3) That these carmen helpers were improperly denied their right to work their 7 A. M. shift on November 10, 1958.

(4) That the aforementioned were required to change shifts on November 10, 1958 without compensation therefor in violation of the current agreement.

(5) That accordingly, the Carrier be ordered to additionally compensate these carmen helpers for sixteen (16) hours at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On October 31, 1958, furloughed Carmen Helpers Alfred L. Martin and Ellis Brown were notified that they were recalled to service in the Carrier's Shop No. 14 at South Louisville, Kentucky effective at 7:00 A. M. November 10, 1958. On November 3, 1958, Carmen Helpers J. T. Rhoades and D. E. Snellen were also notified that they were recalled to service at the same location effective 7:00 A. M. November 10, 1958. Forms WCR No. 188 were used as a means of notification. In the notification of recall to service, these carmen helpers, hereinafter referred to as the claimants, were instructed to report to the shop superin-

personnel officer in the superintendent's office before that date in order that they "may be signed up and ready for assignment at 7:00 A. M." on November 10, 1958. Carmen Helpers Alfred L. Martin, Ellis Brown, John T. Rhodes, and D. E. Snellen were in the group recalled. Upon reporting at 7:00 A. M. on November 10, 1958, it was determined their seniority was such that they did not stand for positions on the first shift. Accordingly, they were notified to report for duty on the second shift, same date.

POSITION OF CARRIER: The procedure followed in recalling furloughed employes to service in this instance was no different than that followed for many years past, without protest. It is carrier's position that there has been no agreement violation. The only rule upon which the employes have relied in handling this dispute on the property is Rule 7 of the current agreement, copy of which is on file with the Division, and carrier asserts there is nothing in Rule 7 pertaining to a situation of this kind. Rule 7 could not be applicable until each individual employe held a specific assignment. No service was performed by the individuals involved in this dispute until such time as they actually went to work on an established position. It is not carrier's fault that they did not have sufficient seniority to hold a position on the first trick. They were recalled in accordance with the agreement in line with their seniority standing. They were not involved under other agreement rules until they actually were placed on a position. In these circumstances, therefore, it is carrier's position there has been no violation of the agreement and the claim should 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 or about November 1, 1958 claimants, who had been furloughed were notified that they were recalled to service in the carmen's shop #14 — at South Louisville, Kentucky, ready for assignment at 7 A. M. on November 10, 1958.

There is no rule in the Agreement requiring a furloughed employe who is recalled to service to report in advance of the effective date of restoration to service.

Claimants reported ready for work at 7 A. M. November 10, 1958 and were then sent home with instruction to return ready for assignment at 3:40 P. M. Claimants reported as directed and were assigned to and worked on the 4 P. M. shift.

Claimants were given an assignment on the 7 A. M. shift and reported ready for work, they were sent home and under Rule 7 of the Current Agreement, they are entitled to receive pay of 4 hours at the straight time rate. Claimants were required to change shifts and in accordance with the provision of Rule 14(A), they are entitled to overtime rate for the shift which they worked commencing at 4 P. M. November 10, 1958.

AWARD

Claim sustained in Part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1961.