

Award No. 3974

Docket No. 3762

2-N&W-SM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

NORFOLK & WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Management arbitrarily violated the Agreement providing for the division of holidays, agreed to by Management and the Sheet Metal Workers in January, 1950, when they retained Pipefitter E. N. Burford to work on coaches on the Coach Yard on Christmas Day December 25, 1958 who's regular assignment was to work in the shops, yards and buildings, first shift, Monday through Friday; and sent Pipefitter C. R. Adcock home after working one and one-half hours on coaches, who's regular assignment is to work on coaches on the Coach Yard Thursday and Friday each week.

2. That accordingly the Carrier be ordered to additionally compensate C. R. Adcock at the time and one-half applicable rate for the aforesaid violation.

EMPLOYES STATEMENT OF FACTS: In December 1958, at Roanoke, Virginia, the Norfolk and Western Railway Co., hereinafter referred to as the carrier, maintained one regular assigned position and one regular assigned relief position for sheet metal workers on the first shift in its Roanoke Coach Yard, the primary duties being to service passenger coaches, dining cars, lounge cars, mail, express and baggage cars. These two assignments were as follows:

Sheet Metal Worker J. W. Lowry assigned to coaches, 7:00 A. M. to 3:00 P. M., Saturday through Wednesday, rest days Thursday and Friday.

Sheet Metal Worker C. R. Adcock, hereinafter referred to as claimant, assigned to a relief shift consisting of 7:00 A. M. to 3:30 P. M. — Monday, Tuesday and Wednesday in the Roanoke Passenger Car Shop and 7:00 A. M. to 3:00 P. M. — Thursday and Friday in the Roanoke Coach Yard on coaches relieving J. W. Lowry. Claimant's rest days are Saturday and Sunday.

No other sheet metal worker employees were regularly assigned to work in the Roanoke Coach Yard on the first shift servicing passenger coaches, dining cars, lounge cars, mail, express and baggage cars in December 1958.

to which Burford was assigned specified "general pipefitting work consisting mainly of maintenance and repair work, Coach Yard and general area." The fact that this assignment included work on coaches is further substantiated by a check of the charges that were made on Burford's time card for the ten work days immediately preceding December 25, 1958. It will be noted that Burford worked a total of eighty-four (84) hours during this period and of the eighty-four (84) hours, thirty-eight (38) hours, or approximately 45% of his time was spent in repairing business and passenger cars. It should be noted that Burford spent eight (8) hours repairing cars on December 25, 1958, the holiday in question. It is also worthy to note a check of carrier's records shows that on at least two previous holidays a prior occupant of the position held by Burford, as covered by Notice No. 4, participated in overtime work at the Coach Yard. The charges made on Pipefitter C. T. Dew's card for February 22, 1957 and July 4, 1958, who occupied position covered by Notice No. 4 on these dates, were as follows:

DATE	SPECIFICATION	CHARGE	HOURS	RATE	AMOUNT
2-22-57	Repairs Pass. Cars	ME 317	10	\$3.399	\$33.990
7- 4-58	Repairs Pass. Cars	ME 317	8	3.684	29.472"

It is readily apparent Pipefitter Burford belonged to the "group" that worked on coaches at the Coach Yard as shown by the job advertisement, by the work he was assigned to do, and by the fact that previous occupants of his position had participated in overtime work at the Coach Yard.

Clearly, then the carrier was compelled to allow Pipefitter Burford to share in the holiday overtime at the Coach Yard in order to comply with the overtime Rule No. 11, contained in the current agreement, with the memorandum agreement of January 24, 1950, with the local agreement, and even with the employees' own statement of the local agreement.

The employees have contended Pipefitter C. R. Adcock was sent home after working one and one-half hours on coaches. As brought out in the statement made by the Coach Yard foreman, no time card was issued to Adcock and no work was assigned to him by any supervisor. The Coach Yard foreman had no knowledge of Adcock being on the premises until approximately 8:00 A.M., when he learned through conversation with the Coach Yard clerk that Adcock had requested and was refused his time card and was informed by the clerk he was not assigned to work that date. The foreman then searched and found Adcock standing at the pipefitter's work bench. He again informed him he was not assigned to work December 25, 1958, whereupon, Adcock left the Coach Yard. The carrier submits that Adcock was not sent home as contended, in fact, he was never allowed to report for work, and his appearance was entirely of his own volition.

CONCLUSION: In this ex parte submission, carrier has shown that the holiday overtime was assigned in accordance with Rule No. 11 of the current agreement, that Pipefitter E. N. Burford was properly assigned to work at the Coach Yard on Christmas Day, December 25, 1958, and that Pipefitter C. R. Adcock was not, in fact, sent home.

The claim in behalf of Pipefitter C. R. Adcock is without merit 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.

Parties to said dispute waived right of appearance at hearing thereon.

Pipefitter Burford is regularly assigned to "general pipefitting work consisting mainly of maintenance and repair work, coach yard and general area," Monday through Friday, with rest days Saturday and Sunday. Claimant Adcock is a pipefitter with a split assignment consisting of the same working days but with only Thursday and Friday in the coach yard, and Monday through Wednesday elsewhere. One other pipefitter works in the coach yard, but Thursday is one of his rest days, so that he is not here involved.

The claim is that by assigning Burford, instead of Claimant Adcock, to work on December 25, 1958, which fell on Thursday, the Carrier violated the Agreement.

Rule 11 provides in part as follows:

"Record will be kept of overtime worked and qualified men called with the purpose in view of distributing the overtime as equally as possible."

The Carrier points out that Rule 11 does not require an absolute unvarying rotation of overtime assignments, but only the distribution of overtime "as equally as possible" on an overall basis. It adds that in any event Burford and Claimant were the only coach yard pipefitters whose regular assignments included Thursday; that Claimant had been assigned to work on Thanksgiving Day, the immediately preceding holiday falling on Thursday, and that Burford was therefore clearly entitled to the Christmas holiday work.

The Employes reply that a Memorandum of Agreement made on January 24, 1950 provided that "the Local Committee and Foremen will work out a satisfactory agreement for dividing holiday overtime as equally as possible;" that a local agreement had been made for the division of holidays by separate groups, one of which consisted of maintenance pipefitting work in shops, yards and buildings, and another of which consisted of those who work on coaches in the coach yard; that Burford belonged in the maintenance group and only Claimant Adcock in the coach group (except for the other pipefitter mentioned above who did not work on Thursdays), and that therefore only Claimant was entitled to work on Christmas even though he had worked on Thanksgiving Day. In other words, though intended to carry out the requirement of Rule 11 to distribute the overtime as equally as possible, the local arrangement would give Claimant all the holiday work falling on his regularly assigned work days.

Thus the objection really is that the Carrier obeyed Rule 11 instead of a local agreement which was supposed to make Rule 11 effective but in fact overruled it.

The Carrier disclaims any knowledge of such a local agreement. It states further that Burford's work was not limited to building maintenance to the exclusion of coach work; that during the ten days immediately preceding December 25, 1958, he spent 38 out of a total of 84 hours, or about 45% of his

time, in repairing business and passenger cars; and that on at least two previous holidays Burford's predecessor in that position had participated in overtime work at the coach yard without complaint .

The claim has not been established; in fact, on the record Carrier would have violated the clear intent of Rule 11 if it had given Claimant the second consecutive holiday to the exclusion of Burford.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.