

Award No. 4061

Docket No. 3763

2-D&H-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 35, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O.
(Carmen)**

THE DELAWARE AND HUDSON RAILROAD CORPORATION

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Joseph Cuneo, Coach Cleaner was improperly compensated for changing from one shift to another resulting from being displaced by a senior employe account of the abolishing of a position and a reduction in force.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Claimant in the amount of 4 hours pay at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: The position held by Leah Pondillo, coach cleaner, on the 8:00 A.M. to 4:00 P.M. shift, Colonie Car Section, was abolished on December 3, 1957. Leah Pondillo displaced Joseph Cuneo a junior coach cleaner on the 8:00 A.M. to 4:00 P.M. shift. There being no junior coach cleaner on this shift, Joseph Cuneo displaced E. Koker-nak, relief coach cleaner on the third shift. (this position works one shift 8:00 A.M. to 4:00 P.M.; two shifts 4:00 P.M. to 12:00 Midnight; and two shifts 12:00 Midnight to 8:00 A.M.).

The claimant was compensated at the straight time rate for this change of shifts.

The dispute was handled with the carrier officials designated to handle such affairs who all declined to adjust the dispute.

The agreement effective May 1, 1942, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that change of shift by the claimant was brought about by the carrier's election to reduce forces by the abolishing of a coach cleaner's position which resulted in the claimant being displaced by a senior employe. In other words, had the carrier not elected to abolish this position the claimant would have remained on the 8:00 A.M. to 4:00 P.M. shift.

- "1. Rule 10 does not cover the present dispute. When the claimant made the actual displacement for which claim is made, claimant no longer held a position on a shift from which a change could be made. Therefore, claimant was not changed from one shift to another.
2. Rule 10 contemplates a temporary transfer from one position to another and provides overtime when the transfer is made and when the employe returns to his regular position. Such was not the case in the present dispute. The employe was not temporarily transferred. He was displaced and upon exercising his own displacement rights, he exercised his seniority to a new permanent assignment. No change was made by the carrier for its benefit. The claimant, after having been displaced, took the position to which his seniority entitled him. The fact that he accepted service on a shift different than that formerly held by him was the result of action of the employe, by the employe, and for the employe.
3. The past practice on the property since Rules 10 and 18 were made effective on May 1, 1942, as attested to by Exhibits A to D, solve the possible question of any ambiguity in the rules by reflecting the practice of the parties in interpreting the agreement in this regard."

Any action other than denial of this claim by the Board would have the effect of adding new rules to the agreement, which is beyond the province of the Board.

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.

Following carrier's uncontested abolishment of a coach cleaner's position, the employe who had occupied said position disputed claimant, a junior employe on the same (first) shift. Claimant then exercised his own seniority to displace an employe junior to him on the third shift. There was no first shift junior employe that he could have displaced.

Petitioner contends that, under the provisions of the first sentence of Rule 10, claimant should have been paid at the overtime rate for the first eight hours he worked on his new shift. Neither of the exceptions contained in the third sentence of the Rule applies here, in the view of petitioner.

Carrier argues that no part of Rule 10 is applicable, because (1) after being displaced, claimant had no shift or position from which to be changed; and (2) he moved as a result of exercising the rights given him by Rule 18. Rule 10, says carrier, was by negotiation and by subsequent practice intended to protect employes from abuse of carrier's right to move employes temporarily from one shift to another and back; it was not intended to govern movement like the one here at issue.

Study of the Rule's language and of the record here compels the Division to hold here with carrier. This ruling is in harmony with those set forth in Awards 1816, 2067, and 2224.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September, 1962.

DISSENT OF LABOR MEMBERS TO AWARD 4061

Carrier admits the abolishment of a coach cleaner's position on the first shift. This act on the part of the carrier caused the claimant to be changed to another shift and he should have been compensated in accordance with the first sentence of Rule 10; thus it is impossible to comprehend the statement of the majority that "Study of the Rule's language . . . compels the Division to hold here with the carrier." The further statement that "This ruling is in harmony with those set forth in Awards 1816, 2067 and 2224" is likewise incomprehensible since the awards are not in point. Rule 10 is unequivocal and should have been applied as written.

C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B Zink