

Award No. 4062

Docket No. 3764

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 Carman Eugene Rohrwasser 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 Walter Witkowski, coach repairer, on the 8:00 A. M. to 4:00 P. M. shift, Colonie Car Section was abolished on December 18, 1957. Walter Witkowski displaced H. Baker, coach repairer, on the 8:00 A. M. to 4:00 P. M. shift. H. Baker displaced Otto Laraway (off sick) position held temporarily by S. Darwak, car inspector and repairer on the 8:00 A. M. to 4:00 P. M. shift. S. Darwak displaced Eugene Rohrwasser, relief car inspector and repairer on the 8:00 A. M. to 4:00 P. M. shift. There being no junior employe on this shift, E. Rohrwasser displaced George Keneston, relief car inspector and repairer, on the 12:00 Midnight to 8:00 A. M. shift.

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 the change of shift by the claimant was brought about by the carrier's election to reduce forces by the abolishing of a coach repairer's position which resulted in the claimant

4. In this particular case, claim is absolutely without merit for the further reason that claimant did not perform any service whatsoever on the date of claim, December 19, 1957; therefore could not possibly be entitled to overtime payment for that date."

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 employees 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.

In this case the essential facts, the Rules involved, and the respective contentions of the parties in regard thereto are the same as those found in Docket 3763 and decided by Award No. 4061.

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 4063

The referee states in his findings that "The Division is forced to hold with the carrier" and in support of such holding cites awards which are inapplicable. The applicable awards, all of which were rendered on disputes arising under the same agreement on the present property, and copies of which were given to the referee, are Awards 1422, 1959 and 2488. Rule 13 (a) of the controlling agreement was properly applied in the afore-mentioned awards and sustains the claim in the current case.

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