

Award No. 4277
Docket No. 3959
2-NYC&StL-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**THE NEW YORK, CHICAGO & ST. LOUIS
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier improperly paid Carman, Robert Walsh for changing from one shift to another on May 1, 1960.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Carman four (4) hours at the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carman Robert Walsh herein-after referred to as the claimant is employed by the New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the carrier, at Fostoria, Ohio.

Claimant Walsh held a regular assignment in the train yard working 11 P. M. to 7 A. M. up to and including April 30, 1960. On this date carrier elected to abolish the position of Car Inspector held by the claimant causing said claimant to have to move to the 3 P. M. to 11 P. M. shift on May 1, 1960, there being no carman's position on the 11 P. M. to 7 A. M. shift held by employees junior to him.

This dispute has been handled with all carrier officers designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective October 1, 1952, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted to be the employees' understanding of the aforementioned agreement that claimant was changed from one shift to another effective May 1, 1960, within the intent and purpose of Rule 13, which reads:

carrier on the basis of past practice and mutual interpretation thereof during the life of the present agreement and predecessor rules of the same import for more than 25 years (since June 1, 1935).

The employes have in conference referred to awards of the Second Division as a reason for changing the interpretation of the present rules as adhered to for the past 25 years. However the controlling rules may read on other properties, Rules 13, 16, 24, and the sample bulletin on Page 97 are peculiar to this carrier, and the issue must be decided on the facts, circumstances, and the interpretation of those rules on this property. Awards 1816, 2356, 2615, and 3103, among others sustain the position of the carrier that the claim is without merit under the controlling rules.

The proper and agreed interpretation of the controlling rules on this property requires the denial of the claim.

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.

Claimant held a regular assignment at Fostoria, Ohio as Car Inspector, working the 11 P. M. to 7 A. M. shift.

By Bulletin of April 28, 1960, his position was abolished, and Claimant, exercising his right of seniority, went on the 3 P. M. to 11 P. M. shift on May 1, 1960.

Rule 13 of the controlling agreement reads in part as follows:

“Employes changed from one shift to another will be paid overtime rates for the first shift of each change, except that this rule shall not apply when the change is made at the request of the employe * * *.”

Claimant maintains that his change of shift was brought about by the Carrier and for its benefit, and therefore he should be compensated an additional four hours at the straight time rate for May 1, 1960.

Carrier's position is that a change of shift which is brought about by the exercise of seniority after the abolition of a position is a “change made at the request of the employe” within Rule 13, and that the exception applies.

We have had many occasions to consider similar situations under similar rules on other properties.

We are well aware of the divergence of views contained in former awards of this division. (Compare for example, Awards 1329, 2488, 3006 and 3128 with Awards 2067, 3853, 4061 and 4188)

We find that the reason for the Rule 13 here involved, and the similar rules construed in our other awards was to deter Carriers from indiscriminately moving employes from one shift to another without sanction.

We hold that the first part of the section of Rule 13 with which we are here involved does not apply to the instant situation.

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 July 1963.

DISSENT OF LABOR MEMBERS TO AWARDS 4277 and 4278

Under the unrealistic reasoning of the majority Rule 13 would have no meaning for the carrier would be free to force an employe to change shifts any time at its discretion and not pay overtime for such change. The first clause of Rule 13, with which we are here involved, is for the purpose of providing additional compensation for an employe because of the inconvenience resulting from a change in shift if such change is caused by reasons beyond his control. The record discloses that the claimant's change in shifts was caused by the carrier's abolishment of claimant's position. Claimant did not change shifts of his own free will but was forced to do so by the circumstances and the present claim should have been sustained.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink