

Award No. 4278
Docket No. 3960
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 EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

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

DISPUTE: CLAIM OF EMPLOYEES:

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

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

EMPLOYEES' STATEMENT OF FACTS: Carman Ellsworth Dillon hereinafter 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 Dillon held a regular assignment on the 3 P. M. to 11 P. M. shift up to and including April 30, 1960. On this date carrier elected to abolish the position on the 11 P. M. to 7 A. M. shift held by Carman, Robert Walsh and Carman Walsh in turn displaced the claimant causing said claimant to have to move to position on repair track working 7 A. M. to 11 A. M. 11:30 A. M. to 3:30 P. M. on May 1, 1960, inasmuch as there were no carmen's positions on the 3 P. M. to 11 P. 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 EMPLOYEES: 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:

It is also true that if there were any ambiguity in the rules (although the carrier believes the rules are clear) the issue must be decided in favor of the 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.

This dispute involves the same Bulletin at Fostoria as was involved in Award No. 4277, and in fact the Claimant herein is the employe displaced by the Claimant Walsh in that award. This Claimant in turn displaced a junior employe on the first shift since there was no position for him on the second shift after he was bumped by Walsh.

The facts are parallel to Award No. 4277; the Rule and Carrier are the same as there, and what we said in that Award applies precisely here.

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