Award No. 4279
Docket No. 4180
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 Carmen L. E. Miller and P. W. Frisch for changing from one shift to another on December 12, 1960 and December 15, 1960 respectively.

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

EMPLOYES' STATEMENT OF FACTS: Carmen L. E. Miller and P. W. Frisch, hereinafter referred to as the claimants, are employed by the New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the carrier, at Fostoria, Ohio.

In order to reduce expenses, carrier elected to reduce the force of carmen employed at Fostoria and in so doing, discontinued a number of carmen positions, including that held by claimant Frisch. As a result of the force reduction by carrier, an employe senior to claimant Miller displaced Miller. The force reduction thus caused both claimants to have to move from the 11 P. M. to 7 A. M. shift — there being no carmen's positions on that shift held by employes junior to them. Claimant Miller moved to the repair track on the 7 A. M. to 3:30 P. M. shift on December 12, 1960 and Claimant Frisch moved to the 3 P. M. to 11 P. M. shift December 15, 1960.

This dispute has been handled with all carrier officers designated to handle such matters, 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.

Rule 16 (old Rule 14) provides that an employe exercising seniority rights under that rule will do so without expense to the Carrier.

The bulletin from which these displacements resulted followed the agreed upon language that affected employes "will be given the privilege of exercising seniority" under Rule 16 (old Rule 14).

Thus it is clear that the changes were made at the request of the employes, that they did exercise seniority as was their privilege, and that in doing so they were bound by the provision of Rule 16 (old Rule 14) that states that an employe exercising seniority will do so "without expense to the Carrier".

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 situation as was considered in Awards Nos. 4277 and 4278, except that we have two Claimants and different dates. The work involved was also at Fostoria.

The facts are parallel to our Findings in Award No. 4277 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 AWARD 4279

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 claimants' changes in shifts were caused by the carrier's abolishment of claimants' positions. Claimants did not change shifts of their own free will but were 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