Award No. 4549
Docket No. 4515
2-CMStP&P-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Machinist Helper George Bruzewitz was improperly compensated for changing from one shift to another on February 21, 1962.

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

EMPLOYES' STATEMENT OF FACTS: Machinist Helper George Bruzewitz, hereinafter referred to as the claimant, is an employe of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier. Said claimant held, by choice, a machinist helper position on the third shift (11:00 P M. to 7:00 A. M.) in the Milwaukee diesel house. On Monday, February 12, 1962, the carrier posted a notice on its bulletin boards reducing its forces on the third shift (11:00 P. M. to 7:00 A. M.) in the diesel house effective Friday, February 16, 1962. By reason of that carrier action, the claimant, assigned to that shift, was affected. On Wednesday, February 21, 1962, the claimant was assigned by the carrier onto the second shift in the diesel house.

In other words the claimant, by reason of the carrier exercising its managerial prerogative in abolishing his third shift position, was changed by the carrier from the 11:00 P. M. to 7:00 A. M. shift to the 3:00 P. M. to 11:00 P. M. shift. The carrier, however, failed to pay the claimant time and one-half for the first shift of the change and as a consequence claim was filed and handled in accordance with the agreement with all carrier officers authorized to handle grievances, including an appeal to Mr. S. W. Amour, assistant to vice president.

The agreement, effective September 1, 1949 as subsequently amended, is controlling.

The Division is forced to hold with carrier, and on both of the above counts. As to the first, Rule 13(a) and the facts of the instant case are so similar to those in the cases decided by denial Awards 1816, 2067, 2224, and 4061 as to compel the conclusion that the first sentence of Rule 13(a) which contains the punitive overtime-pay provision, was not meant to apply to moves from one shift to another where the former shift ceases to exist. Here the shift and positions originally occupied by claimants ceased to exist. Claimants were not moved within the contemplation of said sentence.

Carrier's second contention must also be upheld. Even if a change of shifts may be said to have happened in the instant case, it involved an exercise of seniority by claimants. It is true that the original reason for said moves was carrier's lawful decision to reduce forces, plus carrier's lawful decision as to method of reduction. Absent these two decisions, claimant moves would not have occurred. **It is also true that, given said decisions, claimants had only two alternatives — loss of employment and move to another shift. But the hard facts remain that (1) claimants did voluntarily use their seniority rights in making the moves; and (2) there is no qualification or exception to the language contained thereon in the third sentence of Rule 13(a).** Award 3853.

In the light of all the above, these claims cannot be sustained." (Emphasis ours)

In view of the foregoing, particularly Second Division Award No. 4063 which interprets Rule 13(a) of the schedule agreement between the parties here in dispute, it will be readily and clearly apparent that Rule 13(a) is not applicable in the instant case and, therefore, the instant claim is devoid of merit.

The carrier submits that it is also readily apparent that by the claim which they have presented the employes are attempting to secure through the medium of a board award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your board is not empowered to write new rules or to write new provisions into existing rules.

It is the carrier's position that there is absolutely no basis for the instant claim and we respectfully request that it be denied.

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.

The Carrier by bulletin on February 12, 1962, notified all of its 3rd shift employes in the Milwaukee Diesel House that effective at the close of their respective shifts on February 16th, their jobs were abolished. Concurrently

notice was also posted that notified the employes that certain vacancies existed on the remaining shifts. Claimant was a machinist helper assigned to the 3rd shift and his position was abolished on February 16th. He was unsuccessful in acquiring either of two positions which he bid on in the Locomotive Department Erecting Shop; however, he did have sufficent seniority to secure a machinist helper position on the 2nd shift at the Diesel House and he was assigned there on February 21st.

Claimant requests payment for four hours and charges that he was improperly compensated for changing from one shift to another on February 21st. The Carrier argues that the following quotation from Rule 13(a) applies and that Claimant obtained his new position on the 2nd shift by reason of exercising seniority and not because of a change caused solely by the Carrier.

Rule 13 (a):

> "Employes changed from one shift to another will be paid time and one-half rate for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred. This rule will not apply when shifts are changed in exercise of seniority or at employe's own request."

Numerous prior Awards of this Division have been cited by each party to support its respective arguments. Suffice to say that divergent views are expressed in the Awards upon which the parties rely. We believe that, as applied to the facts before us, not only will the intent of the parties who are signatory to the applicable agreement be best expressed but also continuity will be maintained if we follow the Awards which have held that when jobs, or shifts, are abolished due to economic reasons, whereby an employe can accept furloughed status or exercise seniority to acquire a new position on another shift such is not a change in shift as contemplated by the provision of Rule 13 and the time and one-half rate is not applicable.

For the reasons stated above the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.