Award No. 4550
Docket No. 4534
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:

(a) That under the current agreement, Machinist C. Collins was improperly compensated for being changed from one shift to another on February 19, 1962.

(b) That accordingly the Carrier be ordered to compensate the aforesaid machinist in the amount of eight (8) hours at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: Machinist C. Collins, hereinafter referred to as the claimant, is an employe of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, at its Shops in Milwaukee, Wisconsin.

Prior to the occurrence of this dispute, the claimant held, by preference, a Machinist position in the carrier's diesel roundhouse on the 11:00 P. M. to 7:00 A. M. (Third) shift, working Monday through Friday, with Saturday and Sunday as rest days.

Under date of February 12, 1962 the carrier posted a notice abolishing four Machinist positions on the 11:00 P. M. to 7:00 A. M. shift in the diesel house, effective with the close of the shift February 16, 1962, which eliminated the claimant from the third shift.

The carrier assigned the claimant, effective February 19, 1962 to a position in the diesel roundhouse, working 7:00 A. M. to 3:00 P. M. (first shift). The carrier failed to pay the claimant for the first eight (8) hours for this change in shift at the time and one-half rate. Accordingly a claim was filed and handled in accordance with the agreement, with carrier officers authorized to handle grievances. The claim was unsuccessfully appealed to assistant to vice president, Mr. S. W. Amour.

sidered to have occurred here, the change resulted from the exercise of seniority by claimants.

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 the first sentence of 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.

Claimant had been employed as a Machinist in Carrier's Milwaukee Diesel House; his position on the 3rd shift was abolished on February 16th, 1962. On February 19th after 2 machinist positions became available on the 1st shift, Thursday through Monday, due to the regularly assigned men transferring to the Locomotive Department Erecting Shops, claimant exercised his seniority and obtained one of the vacant positions.

The facts herein are not significantly different from those in Award No. 4549. The decision here must be the same, therefore claimant's request for payment at the time and one-half rate for work performed on February 19, 1962 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.