

Award No. 4631
Docket No. 4502
2-ACL-MA-765

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the applicable Agreement the Carrier improperly paid Machinist J. Irwin for changing from one shift to another shift on January 23, 1962.

2. That accordingly, the Carrier be ordered to additionally compensate the aforesaid machinist for four hours at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. Irwin, hereinafter referred to as the claimant, is employed by the Atlantic Coast Line Railroad Company, hereinafter referred to as the carrier, at their Mechanical Facilities at their Shops at Waycross, Georgia.

Prior to January 2, 1962 machinist J. Irwin was performing relief work for the Carrier under provisions of Rule 16 A governing the use of furloughed employes. On January 2, 1962, Bulletin No. 486 was posted advertising the vacancy of Machinist J. G. Booth, deceased, for machinist in the Electric Shop. The claimant was restored to service in keeping with provisions of Rule 16D covering the restoration of forces and placed on the vacancy created by the death of Machinist J. G. Booth, pending the expiration of the bulletin. Bulletin No. 486.

The senior machinist was successful bidder and assigned to the vacancy as advertised in Bulletin No. 486. The claimant was then instructed by the carrier to work all vacancies of subsequent bulletins pending the expiration of the bulletins. The claimant worked on the first shift on January 22, 1962 and was instructed by the carrier to report to the second shift to work a vacancy that was on the bulletin board on January 23, 1962, which instruction the claimant complied with but was denied the rate of pay as provided for in Rule 9, Paragraph (a) of the current agreement for services rendered on January 23, 1962. The claimant continued to work vacancies of positions bulletined until Bulletin No. 150 was posted which the claimant bid on, was successful bidder, and assigned, by Bulletin No. 158, dated April 23, 1962.

It will be noted that approximately sixty-days elapsed from the date he

The submission of this claim to your board is merely an attempt by the organization to have you board grant a penalty payment which is not provided for by the agreement. It has never been the practice on this carrier to make payment at the time and one-half rate when employes change shifts while working in an unassigned status or in the exercise of seniority. Although the claimant in this case changed shifts on February 15, March 9, March 15, and April 6, as well as on January 23, while working temporary vacancies pending his regular assignment on April 23, the organization made no claim for the penalty rate for changing shifts on any of these dates except on January 23. In accordance with past practice, claimant was paid straight time rate on each of the above dates. Clearly, there was no difference in the cause for this man changing shifts on January 23 and the four other dates mentioned; yet, the organization has singled out January 23 in order to prevail upon your Board to grant them overtime payment not provided by past practice nor by agreement.

Carrier points out that each change of shift incurred by claimant, including the change on January 23, was, in effect, the direct result of a senior employe exercising his seniority and displacing claimant. Had no senior employe bid on the position left vacant by the death of an employe, then Machinist Irwin could have been permanently assigned and therefore would not have changed shifts on January 23. There can be no doubt that the sole cause for this employe changing shifts was due directly to the exercise of seniority.

Your board in Award 1546 stated:

"However, Rule 8 expressly exempts the payment of overtime when the transfer from one shift to another is made by an employe 'in the exercise of seniority rights.' This specific exemption is in no way qualified as to the act being voluntary or involuntary. In view thereof we find it expressly covers the situation of the claimants.

Therefore, we find this claim to be without merit."

Machinist Irwin's seniority entitled him to fill these temporary vacancies during the bulletining period, inasmuch as he had complied with Rule 16-A.

This carrier simply recognized the seniority and request of claimant to perform this work in accordance with the provisions of the agreement, and it is a strange procedure for the organization to now ask your board to compel carrier to make a penalty payment for complying with the agreement. There is no provision in the agreement requiring the payment of overtime to an employe who changes shifts while working in a temporary unassigned status; neither is there any provision for paying overtime to employes who change shifts in the exercise of seniority. Additionally, past practice and the fact that the organization seeks payment for only one change of shift out of several involved in claimant's return to a regular assignment, clearly show that there is no basis whatsoever for this unwarranted claim. It should be denied in its entirety.

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 Division is of the opinion that Rule 9, both from its complete context, rationale, and arguments advanced in the submission of the parties must be construed to have applicability only to employees holding regularly assigned position, such as in the instant case. For this reason, it is not necessary to make any determination as to whether there is or there is not, a change in shifts made through the exercise of seniority.

The facts are essentially the same as in Award 4630, and the submissions contain the same type of evidence and arguments.

Our Award No. 4630 governs here and the claim must be denied in accordance therewith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 12th day of February, 1965.