

Award No. 4741

Docket No. 4596

2-WRofA-CM-'65

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 126, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE WESTERN RAILWAY OF ALABAMA

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Agreement was violated when furloughed Machinist, Cecil Morgan, was employed as a carman by the Western Railway of Alabama at Montgomery, Alabama and worked as such on November 12, 13 and 14, 1962, and

2. Accordingly the Carrier should be ordered to additionally compensate Carmen S. E. Ryals, Marvin Maddox and S. H. Edwards, who were available and entitled to work from the overtime board on those dates, for 8 hours, each, at punitive rate of pay.

EMPLOYEES STATEMENT OF FACTS:

Furloughed Machinist, Cecil Morgan, was employed as a carman by the Western Railway of Alabama and worked in that capacity in the car shop at Montgomery, Alabama for 8 hours (8:00 A.M. to 4:30 P.M., with 30 minutes lunch period) on each of the following dates: November 12, 13, and 14, 1962. After working November 14, 1962, his services as a carman were discontinued.

On the dates and during the hours Machinist Morgan worked as a carman, the three claimants, Carmen S. E. Ryals, Marvin Maddox and S. H. Edwards were off duty and available for service. Their work week and shift assignments were as follows: S. E. Ryals—Tuesday and Wednesday, Second Shift, Thursday, Friday and Saturday, First Shift, Rest Days, Sunday and Monday; Marvin Maddox—Thursday through Monday, Second Shift, Rest Days, Tuesday and Wednesday; S. H. Edwards—Friday, Saturday and Sunday, First Shift, Monday and Tuesday, Second Shift, Rest Days, Wednesday and Thursday.

Prior to the time Mr. Morgan was employed in the car department, Carman W. A. Phillips, who served his apprenticeship with the Western Railway of Alabama, at Montgomery, between the dates of November 24, 1953 and July 11, 1958, applied for a carman's job on several occasions. Mr. Phillips resides at Montgomery, was available for service during the time Morgan worked as a carman and could have

S. H. Edwards—Relief Car Inspector, off days Wednesday and Thursday, Worked 8 hours November 12, 8 hours November 13. Did not work off day, November 14.

S. E. Ryals—Car Inspector, second shift, off days Sunday and Monday. Off November 12, worked November 13 and 14.

Claimants lost absolutely nothing by this transaction. There was no overtime involved in the case and had Morgan not worked, none of claimants would have been worked.

As Carrier has pointed out hereinabove, none of the rules of the Agreement were violated. There is no basis whatever for petitioner's claim. As the claim is without merit. Carrier respectfully requests it be declined.

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 record shows without question that prior to furloughed machinist Morgan's employment for carmen's work, W. A. Phillips, a former carman, had applied for work and that a week after Morgan's last shift he was employed. Claim 1 must be sustained. Phillips was the carman directly injured by Morgan's employment, and the claim should have been on his behalf rather than on behalf of the Claimants. Claim 2 must be denied.

A W A R D

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.

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