

Award No. 4834

Docket No. 4683

2-IT-CM-'66

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. 154, RAILWAY EMPLOYEES'

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

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman A. Houston was improperly compensated while working outside his regular bulletined hours on Feb. 26, 27, 28, and March 1, 1963.

2. That Carman Houston was improperly laid off during regular working hours Feb. 25, 26, 27, 28, and March 1, 1963.

3. That accordingly, the Carrier be ordered to additionally compensate Mr. Houston as follows:

(A). Four (4) hours at the straight time rate for each day, February 26, 27, 28, and March 1, 1963, account being improperly paid for working.

(B). Eight (8) hours at the straight time rate for each day, February 25, 26, 27, 28, and March 1, 1963, that he was laid off during regular working hours.

EMPLOYEES' STATEMENT OF FACTS: Carman A. Houston, hereinafter referred to as the claimant, was regularly assigned to position no. 463 at Roxana, Illinois, which worked Monday through Friday, hours 4:00 p.m. to 12:00 p.m.

On date of February 25, 1963, the Illinois Terminal Railroad Company, herein and referred to as the carrier, posted bulletin no. F-4010, notifying that position no. 463 was discontinued effective at the end of tour of duty March 1, 1963. At the same time bulletin no. F-4011 was posted advertising new position no. 463 to work Tuesday through Saturday with hours 8:00 a.m. to 4:00 p.m., assignment to be effective March 2, 1963.

However, the claimant was notified by telephone to report for work at 8:00 a.m., February 25, 1963, and work those hours pending assigning of this job March 2, 1963, and not to work his regular hours 4:00 p.m. to 12:00 p.m. He was paid at

shift to the 8 a.m. shift and paid him at the time and one half rate in accordance with the first paragraph of Rule 13 of the effective agreement which reads as follows:

"RULE 13—Overtime for Changing Shifts. Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred."

In view of the change in off days and hours of assignment on the car inspector's job at Roxana, mechanical department issued bulletin dated February 25, 1963 abolishing such job and readvertising it with the new hours of service and rest days. Claimant continued working from 8 a.m. to 4 p.m. after February 25, 1963 pending bulletining and assignment of readvertised position. Effective March 2, 1963 claimant was assigned to the readvertised position as the senior bidder.

POSITION OF CARRIER: There is in effect an agreement between Illinois Terminal Railroad Company and the mechanical department employees represented by System Federation No. 154 bearing an effective date of September 1, 1949, copies of which are on file with the board and which by reference hereto is made a part of this submission.

It is carrier's position that the only rule in the applicable agreement pertinent to this case is the first paragraph of Rule 13 which is stated above in carrier's statement of facts. Carrier changed the shift of claimant on February 25, 1963 and paid him time and one half rate for the first shift of the change which is all the rule requires.

Claimant was not changed from the 8 a.m. shift on any other dates in dispute and he is, therefore, not entitled to any additional compensation for February 25, 26, 27, 28 and March 1 as claimed by petitioner. The principals involved in this docket are no different than those contained in Second Division Awards No. 2789 and No. 3848. Second Division Award No. 3848 covers the same parties that are involved in the instant disputes. In both awards cited there are slightly different facts, but such differences are not so substantial as to arrive at a different decision in the instant dispute and since Carrier paid claimant time and one half rate for the first shift that he worked under the change of shift rule, the instant dispute has no merit and claim should 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's assignment, 4:00 p.m. to 12:00 p.m., Monday through Friday, was cancelled on Feb. 24, 1963, and a new assignment 8:00 a.m. to 4:00 p.m. Tuesday through Saturday, was bulletined, both effective March 2nd. To accommodate the patron for whose convenience the changes were made, the Carrier, instead of having Claimant work his usual shift on Monday, Feb. 25th, called an extra switch engine to perform during the newly bulletined hours the work in connection with which Claimant would have served; and it transferred him to the new hours as of Tuesday,

Feb. 26, and continued him there through Saturday, March 2nd, whereupon, pursuant to his bid, he was given the new assignment. In accordance with Rule 13 he was paid the overtime rate for Feb. 26th, his first shift after the transfer.

The Claims are: (A) for overtime rates for each of the four days of his old assignment, namely, Tuesday, Feb. 26th, through Friday, March 1st, on which he worked the new hours pending bulletin; and (B) in addition, for pay at regular rate for each of the five days, Monday, Feb. 25th, through Friday, March 1st, on which he did not work his old shift.

Rules 13 under which, as noted, Claimant was paid the overtime rate for Tuesday, Feb. 26th, so far as here relevant reads as follows:

“Employes changed from one shift to another will be paid overtime rates for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred.”

Claim (A) is based upon Rule 6 (a), which reads as follows:

“(a) All service performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.”

As to Rule 6(a) Rule 13 was a rule “hereinafter set out” and even if not thus specifically excepted, it would, as a special rule, prevail over the general provision of Rule 6 (a). For both reasons its provision for the overtime rate for only the first shift must prevail over Rule 6 (a)’s provision of the overtime rate for all service performed until relieved.

Having been paid all overtime to which Claimant was entitled under Rule 13, i.e., for his first shift of the change, Claim (A) must be denied.

Claim (B), for pay at regular rate for the five days on which he did not work his old shift, is based upon the first paragraph of Rule 11, which reads as follows:

“When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time.”

Rule 11 cannot be considered applicable to Monday, Feb. 25th, upon which Claimant did not work outside of his regularly assigned hours, and there was not overtime to be equalized. As further pointed out by the Employes, this Division held in Award 4477 that the forty hour work week rule together with the bulletining rule “give support to the Claimant’s position that the last day of his work week was improperly taken away from him by the Carrier.” However a Note to Rule 1 of this Agreement provides that the terms “positions” and “work” refer to “service, duties of operations necessary to be performed the specified number of days per week, and not to the work week of individual employes;” and Rule 1 (a) 2 provides:

“Nothing in this Agreement shall be construed to create a guarantee of any number of hours or days of work where none now exists. The inclusion of the foregoing sentence shall be without prejudice to the determination of the question of whether or not a guarantee exists.”

Since the record contains no showing of any prior guarantee, the cited holding of Award 4477 cannot be followed here. It is true, also, that instead of working on Monday, the first day of his old assignment, Claimant worked on Saturday, the last day of the position to which he was transferred so that he did not lose a day.

With reference to the other four days, Claim (B) cannot be sustained in the face of the provision of Rule 13 that on the second day the employe "shall be considered transferred" to the new hours, which necessarily means that for Tuesday, Feb. 26th, and subsequent days, the hours of his old assignment no longer applied.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.