Award No. 5029
Docket No. 4911
2-MKT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That under the current agreement Carman R. V. Rogers was improperly compensated for changing from one shift to another on September 6, 1964.

2 — That accordingly the Carrier be ordered to additionally compensate the aforesaid claimant in the amount of four hours at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: Carman R. V. Rogers, hereinafter referred to as the claimant, is employed by the Missouri-Kansas-Texas Railroad Company, hereinafter referred to as the carrier, at Parsons, Kansas, the claimant holds seniority on the January 1, 1965 roster of carman at Parsons, Kansas.

The carrier made the election to reduce the force on the repair track by one carman on August 24, 1964, to be effective September 4, 1964, and as a result of carrier's action in electing to reduce the force of carmen, the claimant was displaced by a senior carman and was forced to change from the 3:00 P. M. to the 11:00 P. M. shift in the freight yard.

When Carman E. E. Treadway's job was cut off on the repair track the following displacements occurred:

E. E. Treadway displaced J. B. Darnell on 7:00 A. M. to 3:00 P. M. shift, rest days Wednesday and Thursday.

J. B. Darnell displaced I. L. Ramey off of relief job working Saturday and Sunday repair track, Monday, Tuesday and Wednesday on 11:00 P. M. to 7:00 A. M., rest days Thursday and Friday.

I. L. Ramey displaced A. B. Curtis off of the 3:00 P. M. to 11:00 P. M. job, with rest days Saturday and Sunday.

Thus, Award 2488, relied upon by Mr. Fike, has now been overruled by a subsequent award of the Second Division, interpreting the same agreement rule and involving a claim under similar facts and circumstances. Award 2488 cannot, therefore, be considered a precedent in any subsequent case.

Carrier has hereinbefore shown that General Chairman Fike, during the handling of this claim on the property, relied solely upon the language of Rule 10 (a) of the current shop crafts agreement, and in support of his reliance upon that rule, he cited Awards 466, 467, 1235 and 2488 of the Second Division. This constituted Mr. Fike's entire case, and his only attempts to support the claim for payment of an additional four hours to the claimant for changing shifts on September 6, 1964.

Carrier, on the other hand, has shown that the language of current Rule 10(a) is clear, unambiguous and unrestricted; that its meaning is not subject to misinterpretation. Carrier has further shown that Award 1235 of the Second Division, upon which Mr. Fike places his principal reliance, was based upon a diifferent rule (and a distorted and unrealistic interpretation of that rule); that Awards 466 and 467 were based upon a changing shifts rule that did not even contain an exception with respect to exercise of seniority (as does our current Rule 10 (a) as hereinbefore shown); that Award 2488 was based upon a distorted and unrealistic interpretation of the language of the rule involved which has now been overruled by the Second Division in a subsequent award and is, of course, no precedent in this or any other claim.

Under principles long adhered to by the Second Division, National Railroad Adustment Board, this carrier is not required to prove that its actions in refusing to pay Claimant Rogers at the overtime rate for September 6, 1964, was not in violation of the agreement—to the contrary, it is the obligation of the organization to prove that carrier's action **did** violate the agreement, and clearly this has not been done. All that has been presented in support of the organization's case is the unsupported assertions of the general chairman, together with citation of four awards, all of which have been shown in the foregoing to be without precedent value here or elsewhere.

It is abundantly clear that the carrier's actions which were the subject of this claim were not in violation of any agreement rule, and that the organization has not sustained its burden of proving a violation of the current agreement between the parties.

The carrier respectfully requests the Second Division to dismiss this claim because it is barred by the nine-month time limit provisions of Rule 27 (d) as heretofore shown in this submission, or, in the alternative, to deny it in its entirety for want of an agreement rule to support it.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company respectfully requests the Second Division, National Railroad Adjustment Board, dismiss or deny said claim and grant said Railroad Company such other relief to which it may be entitled.

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.

Carrier reduced its force of carmen at Parsons, Kansas, and as a result Claimant lost his position on the 3:00 P. M. to 11:00 P. M. shift. He thereupon exercised his seniority and displaced a carman on the 11:00 P. M. to 7:00 A. M. shift. The theory of the present claim is that under Rule 10(a) he should have received overtime pay for the first day he worked the 11:00 P. M. to 7:00 A. M. shift.

Rule 10(a) reads as follows:

> "An employee changed from one shift to another will be paid overtime rates for the first shift of each change. An employe working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged in the exercise of seniority."

While the first two sentences of Rule 10(a) support Petitioner's theory, the third specifically provides, without qualification of any kind, that the overtime requirement does not apply when shifts are exchanged in the exercise of seniority. This exception is definite and clear and the present situation comes squarely within its terms. A contrary conclusion would distort, in our opinion, the plain and ordinary meaning of the language used in the last sentence of the Rule 10(a). We are bound by the parties' Agreement and do not regard as persuasive authority awards that have considered rules containing substantially different language than is now before us (cf. Award 1235, e.g., where the rule contained two exceptions, i.e., shift exchanged at the request of the employe involved or in the exercise of his seniority.

It is precisely in a force reduction that seniority is expected to come into play to protect eligible employes. Here, by exercising his seniority, Claimant elected to take the third shift position in preference to going on furlough and thus was afforded the very protection that seniority rights are designed to provide.

In view of the wording of Rule 10(a), we have no alternative but to deny the claim. It accordingly is unnecessary to consider Carrier's additional contention that Petitioner failed to comply with procedural requirements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1967.