



Award No. 5174

Docket No. 4939

2-B&O-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) The current Agreement, Rule 10, was violated when the following twenty-five (25) named claimants were improperly compensated for changing shifts.

Carmen

Paul A. Kovalchick
Paul F. Betton
Lorraine F. Duttry
Joseph A. Getch
Dale Smith
Clifford D. McAninch
Francis E. Hand
John T. Hoover
Ralph Gamble
Edward J. Platt
Thomas L. Minns

Carmen-Helpers

Joe Martino
Russell W. Hand
Bruno Lepionka
Stanley Marusiak
Walter R. Shenkle
Henry Hollman
George H. Hrin
John W. Clark
John G. Shannon
Ray L. Swanson
Walter Krul
Kenneth Flanders
Ralph Laborde
Blake E. Joiner

(2) Accordingly, the carrier should compensate the claimants in the amount of eight hours each at the overtime rate.

EMPLOYEES' STATEMENT OF FACTS: On August 3, 1964, a notice was posted by Superintendent of Shops W. A. Barrick at the DuBois Car Shop, DuBois, Pennsylvania, notifying all concerned that:

"Effective with the scheduled close of tour of duty, Friday, August 7th, 1964 All Carman Cutting Torch Operators, Carman Welder Operators, Carman (sic) and Carman Helper Positions on the SECOND TRICK in the Underframe Shop Erecting Shop, and Roundhouse ARE ABOLISHED.

All employees affected by this abolishment will report to work Monday August (sic) 10th at 7:00 A.M. and arrange to exercise seniority."

In the instant case, if what occurred be construed as a "reduction in force," then plainly the claimants are not entitled to overtime for the first shift of the change because they did not lose a day's pay.

On the other hand, if what occurred be construed as a restoration of forces, then similarly the claimants are not entitled to overtime for the first shift of the change because, as the parties have agreed since 1948, "When force is increased after it has been reduced, employees are not obliged to change shift but do so only if they desire to do so. Therefore any change of shift that occurs in connection with the restoration of forces is a change at the request of the employee involved and Rule 10 does not apply in such circumstances."

Plainly, by following the language of Rule 10(a) and, just as importantly, the interpretations the parties themselves have placed on the rule over the years, the claimants in the instant case did not qualify for the overtime payment.

These claims are not valid and ought to be denied. Therefore, the Carrier respectfully requests that this Board so rule and deny these claims in their entirety.

Oral hearing is requested.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

In this claim for additional compensation, it is alleged that the twenty-five named Carmen-Claimants were improperly compensated under the following circumstances. Pursuant to notice duly posted August 3, 1964, the jobs of Claimants were abolished at close of tour of duty August 7, 1964, and said notice further specified that the employees affected "will report to work Monday, August 10th, at 7:00 A. M. and arrange to exercise seniority." Thereafter, on said date, August 10th, each Claimant received a position and again began work.

Thus the record here discloses a state of facts not materially different from those that were examined and considered in Second Division Awards 4277 and 4549. And here also we find that the regularly assigned jobs of Claimants were abolished and that thereafter the Claimants, exercising their seniority, chose work on other shifts.

After a lengthy study of the large number of authorities cited for our consideration by both parties here involved, we feel it incumbent upon us to follow the holding in Award 4549 where it was said:

"* * * Suffice to say that divergent views are expressed in the Awards upon which the parties rely. We believe that, as applied to the facts before us, not only will the intent of the parties who are signatory to the applicable agreement be best expressed but also continuity will be maintained if we follow the Awards which have held that when jobs, or shift, are abolished due to economic reasons, whereby an employee can accept furloughed status or exercise seniority to acquire a new position on another shift such is not a change in shift as contemplated by the provision of Rule 13 and the time and one-half rate is not applicable." (Rule 13, mentioned in Award 4549, in pertinent part uses the same language as Rule 10(a) in the instant case, to wit: * * * 'employees changed from one shift to another * * *'.")

Accordingly, it is our conclusion that this claim may not be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.