Award No. 5175
Docket No. 4940
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 EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) The current shop crafts agreement was violated by the Baltimore & Ohio Railroad Company, hereinafter referred to as the carrier, when the following Carmen were improperly compensated for changing shifts.

G. Liddle
E. Maleski
M. Karetski

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

EMPLOYES' 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, Carmn (sic) and Carmen Helper Positions on the SECOND TRICK in the Underframe Shop Erecting Shop, and Roundhouse ARE ABOLISHED.

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

Copy of this notice is attached and entered as Exhibit A.

On August 11, 1964, a claim was filed by Local Chairman on behalf of 25 Carmen and Carmen helpers. Inadvertently the claimants were not included in the initial claim, therefore, on September 22, 1964, claim was initiated for these claimants, and copy thereof is attached as Exhibit B. The claimants held second shift assignments when they were instructed by Carrier to report to the first shift.

"At conference on October 5 we discussed the application of Rule 10, including the interpretation thereof to the restoration of forces which have been previously furloughed.

The third paragraph of the interpretation of Rule 10 makes no reference whatever to restoration of forces but is confined solely to change of shifts caused by reduction in force. Therefore the examples contained in that paragraph are likewise confined to change of shifts caused by reduction in force.

When force is increased after it has been reduced, employes are not obliged to change shift but do so only if they desire to do so. Therefore any change of shift is a change at the request of the employe involved and Rule 10 does not apply in such circumstances."

Again, the letter of November 24, 1948 represented the conclusions reached in the conference of October 5. Again there is no additional correspondence on the subject. There were no further conferences.

Conclusions Deriving From The Interpretations The Parties Themselves Have Placed On Rule 10 (a) When Related To The Factual Record In The Instant Case:

The parties have consistently followed these interpretations to Rule 10(a) since at least 1947 and 1948.

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, employes 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 employe 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, the claimants in this case did not qualify for the overtime payment. The claims here are not valid and ought to be denied. The Carrier respectfully requests that this Board so rule and these claims be denied 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 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 were given due notice of hearing thereon.

Along with Docket 4941, this case was presented by representatives of both parties involved as a companion case to Docket 4939, now Award 5174. Accordingly, the decision should be the same.

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.

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