Award No. 5176
Docket No. 4941
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, hereafter referred to as the carrier, when it refused to properly compensate Carman William G. Craft, hereafter referred to as the claimant, for changing shifts.

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

EMPLOYES' STATEMENT OF FACTS: The facts in this case are that on June 29, 1964, pursuant to a change of programs from hoppers to gondolas at DuBois, notice was posted abolishing all turns on first trick in the Underframe Shop. On July 6th, notice was posted abolishing all turns on the first trick in the Erecting Shop. Then, on August 3rd, notice was posted abolishing all turns on second trick in the Underframe Shop. This completed all hopper car operations and necessitated preparation for work on gondolas. This notice stated:

"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 employes affected by this abolishment will report to work Monday August (sic) 10th at 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 for eight hours each at time and one-half rate account of changing shifts under Rule 10 on August 10, 1964. These 25 claimants held second shift assignments when they were instructed by the

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 claimant is not entitled to overtime for the first shift of the change because he did not lose a day's pay.

On the other hand, if what occurred be construed as a restoration of forces, then similarly the claimant is 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 Interepretation the parties themselves have placed on the Rule, the claimant in this case does not qualify for the overtime payment for August 25, 1964. The claimant was properly compensated at the pro rata or straight time rate of pay. The claim for the overtime rate is not valid. Therefore, the Carrier respectfully requests that this Board so rule and that this claim be declined in its 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.

Here again we have for consideration a claim essentially similar to those dealt with in Awards 5174 and 5175.

It calls for the same decision.

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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