



Award No. 5507
Docket No. 5261
2-IC-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current Agreement at Weldon Coach Yard when they forced R. Cervantes to change shifts three (3) times without compensating him with the overtime rate.

2. That the Carrier pay Electrical Worker R. Cervantes, upgraded apprentice, Employee No. 112591, for twelve (12) hours' pay at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Company, hereinafter referred to as the Carrier, did abolish positions held by Electricians at the Weldon Coach Yard, Chicago, Illinois.

Employees affected did displace younger men on the seniority list.

Mr. R. Cervantes, hereinafter referred to as the Claimant, working as an upgraded electrician apprentice, could neither bid on a job nor displace another employe.

The Carrier did assign Claimant to the following work assignment:

Oct. 16 - Off
Oct. 17 - 4:00 P. M. to 12:00M
Oct. 18 - 8:00 A. M. to 4:00 P. M.
Oct. 19 - 8:00 A. M. to 4:00 P. M.
Oct. 20 - 8:00 A. M. to 4:00 P. M.
Oct. 21 - 8:00 A. M. to 4:00 P. M.
Oct. 22 - 8:00 A. M. to 4:00 P. M.
Oct. 23 - 12:00M to 8:00 A. M.
Oct. 24 - 12:00M to 8:00 A. M.

The claimant's actions amounted to a request that his shift be changed.

All data is known to the union and has been made a part of the dispute.

(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 waived right of appearance at hearing thereon.

Following the abolishment of certain Electrician positions by Carrier, Claimant, an upgraded apprentice, was displaced by a senior employe from his assigned Position No. 21 on October 16, 1965. Thereafter, Claimant filled a series of jobs under bulletin from which he also was displaced by senior employes through the exercise of seniority. The acceptance of these positions under bulletin by Claimant resulted in his changing shifts three (3) times, for which Petitioner contends he was entitled to receive the overtime rate on each occasion instead of the straight time rate allowed by Carrier under the provisions of Rule 14 (A) of the applicable Agreement, which provides as follows:

"Employes changed from one shift to another will be paid overtime rate for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employes involved."

Petitioner avers that Claimant was changed from one shift to another by Carrier for its own economic benefit, and that the shifts involved were not "exchanged", as alleged by Carrier. Furthermore, Petitioner contends that Claimant, as an upgraded apprentice, could neither bid on an electrician's job nor place himself in an open position.

Carrier's defense is that Rule 14 (A) is inapplicable because Claimant was not ordered by Carrier to change shifts, but voluntarily changed shifts on each occasion rather than return to work as an apprentice. Furthermore, the Carrier urges that the exercise of seniority by senior employes was the proximate cause of a chain reaction which ultimately resulted in Claimant's choosing various shifts on a voluntary basis.

The parties have cited numerous prior Awards of this Division in support of their respective positions which represent divergent opinions concerning similar claims. Petitioner urges that Award 237 is particularly applicable in this case, which arose out of an earlier dispute on the same property under a similar rule with another organization. Examination of Award 237 discloses substantial differences in material respects.

Claimant here was not regularly assigned as an electrician and merely held a series of jobs under bulletin on a temporary basis. Moreover, he filled such positions to avoid reverting to the lower apprentice grade, and was not changed to other shifts by an act of the Carrier, as was concluded by this Division in Award 237.

In this case, Claimant filled a series of temporary vacancies on regular bulletined jobs for interim periods following his initial displacement, and he was not changed from one shift to another as a holder of a regular position for the convenience of the Carrier. The fundamental purpose of Rule 14 (A) is to compensate an employe for the inconvenience which results from a Carrier's movement of a regularly assigned employe to another shift for its convenience, and said rule is inapplicable to the change of shifts involved in this dispute. Awards 4630, 5045 and 5409. Accordingly, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1968.