



Award No. 5695

Docket No. 5449

2-CB&Q-CM '69

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. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O.
(Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the following employes were improperly compensated for changing from one shift to another on April 6, 1966.

R. E. Francis, Carman Welder
J. L. White, Carman
T. J. Sorrells, Carman
W. H. Bell, Carman Helper
K. L. Allen, Carman Helper
R. R. Runge, Carman Helper

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employes in the amount of four (4) hours pay at the straight time rate.

EMPLOYEES' STATEMENT OF FACTS: Carmen R. E. Francis, J. L. White and T. J. Sorrells; and Carmen Helpers W. H. Bell, K. L. Allen and R. R. Runge, hereinafter referred to as the Claimants, were employed by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Carrier, at the Havelock Shops, Lincoln, Nebraska, with regular assignment of hours from 4:00 P.M. to 12:00 Midnight, and there they remained until the Carrier elected to make a reduction in the second shift force and thereby changed the Claimants assigned hours.

Two shifts of employes are maintained at the Havelock Shops. First shift works from 7:30 A.M. to 4:00 P.M.; the second shift, as stated above, works from 4:00 P.M. to 12:00 Midnight, Monday through Friday with Saturday and Sunday as assigned rest days.

As a result of the Carrier's action in electing to reduce the second shift force, the Claimants were forced to work on the first shift beginning Wednesday, April 5, 1966. Copy of notice is attached and identified as Employes Exhibit "A".

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."

These two awards stand as precedence compelling a denial of award here. The claimants' second-shift jobs were abolished as a result of the completion of the 200 refrigerator car building program. All those who bid on second-shift jobs could reasonably expect to be forced back on the first shift when this program was completed. The change of shifts back to the 7:30 A.M.-4:00 P.M. hours was a direct result of the claimants' exercise of seniority.

In progressing this claim on the property, the Organization cited six awards. Second Division Awards 1329, 1959 and 2488, which the Brotherhood relied upon, all involved reductions of force, which did not occur here. The Board allowed the change-of-shift pay on the theory that it was a compulsive exercise of authority.

Second Division Award 3006 was also cited by the Union in handling this case on the property. That involved a case where one claim was sustained and another denied, but the rule did not contain an exception for changes resulting from exercises of seniority. In Second Division Award 3128, a similar rule was involved, making exception only " * * * when shifts are exchanged at the request of the employees involved." This is an entirely different contractual provision than Rule 12 of this agreement.

The Organization cited Second Division Award 3848, but in that case an entirely different rule was involved. The only exception provided therein to the time and one-half for the first shift following each change was for relief jobs working different shifts.

The Board must conclude that none of the cases cited as precedents by the Organization are authoritative in the case at bar. We do believe that Second Division Awards 4188 and 5174, together with the precedents cited in those cases, constitute controlling decisions with facts similar to those involved herein. The Board should follow its decisions in 4188 and 5174.

In conclusion the Carrier entreats the Board to find that the claimants' change of shift beginning on April 7, 1966 was a direct result of their exercise of seniority. As such they are not entitled to time and one-half payments for that date.

(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.

Petitioner contends that six named claimants were improperly compensated by Carrier for changing from one shift to another on April 6, 1966 at Carrier's Havelock Shops in Lincoln, Nebraska. Six second shift positions held by claimants were abolished, and each was immediately re-assigned to fill vacancies on the first shift at this location. There was no reduction in force at Carrier's Havelock Shops, as a result of the abolishment of six second shift positions, which coincided with completion of a refrigerator car construction program. Petitioner's primary averment is that the claimants are entitled to additional compensation under Rule 12 of the applicable Agreement because of the involuntary change in shifts for the convenience of the Carrier.

Carrier avers that claimants' change of shift was a direct result of their exercise of seniority and that the time and one-half shift payments sought by Petitioner on behalf of claimants are not required under Rules 12 and 16(a) of the applicable Agreement.

Rule 12 provides as follows:

"CHANGING SHIFTS"

"Rule 12. Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred. The time and one-half payments will not apply in any case where transfer from one shift to another is the direct or indirect result of the exercise of seniority."

Rule 16(a) provides as follows:

"EXERCISE OF SENIORITY"

"Rule 16(a) The indiscriminate exercise of seniority to displace junior employees, which practice is usually called 'rolling' or 'bumping' will not be permitted. However, an employee whose job is abolished, or who may be displaced from his position by other causes will be permitted to exercise seniority to any job occupied by a junior employee on his respective seniority list."

The gravamen of the Carrier's defense is that claimants exercised seniority on the first shift to acquire new positions held by junior employees following abolition of the positions they had held on the second shift. In this connection, Carrier relies on two earlier Awards of this Division, which support Carrier's position that displaced employees who exercise seniority and "bump" junior employees from other positions are not entitled to be paid overtime for the first shift work on the positions to which transferred as a result of the exercise of seniority.

Petitioner contends that even though no bulletins were posted for claimants to work the first shift, no reduction in the over-all force was involved in the abolition of the second shift positions formerly held by claimants, and the first shift was merely increased in size by an additional number of positions equal to the number of abolished positions on the

second shift. Therefore, Petitioner avers that claimants herein did not displace junior men from any positions, and that no exercise of seniority was involved in the transfer of claimants to the first shift.

It is undisputed that claimants originally exercised seniority by bidding on bulletins advertising positions on the second shift, which were subsequently abolished by Carrier. By contrast, claimants' were required by Carrier to return to the first shift on April 6, 1966 even though the job abolishment notice posted on April 5, 1966 did not specifically order them to do so. Moreover, there is no probative evidence to support a finding that the claimants displaced junior employees on the first shift as urged by the Carrier. The record herein supports a finding that the change of shifts was not a direct result of the exercise of seniority by claimants, but rather a readjustment of work forces on both the first and second shifts for the convenience of the Carrier. Accordingly, the claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.