

(Advance copy. The usual printed copies will be sent later.)

Page 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6521
Docket No. 6381
2-NOPB-CM-'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 99, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ New Orleans Public Belt Railroad

Dispute: Claim of Employees:

1. That the Agreement was violated when on April 14, 1971, Carman L. Kocke, was not paid the overtime rate of pay for changing shifts.
2. That under the current applicable agreement, Carman L. Kocke employed by the New Orleans Public Belt Railroad is entitled to compensation for four (4) hours at the pro rata rate of pay for April 14, 1971.
3. That accordingly, the New Orleans Public Belt Railroad be ordered to compensate Carman L. Kocke for four (4) hours at the pro rata rate of pay for said violation.
4. That accordingly, in addition to the money amounts claimed herein, the New Orleans Public Belt Railroad be ordered to compensate Carman L. Kocke an additional amount of 6% per annum compounded annually on the anniversary date of April 14, 1971.

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.

On April 13, 1971 Claimant called in ill and was absent from work on that day. Claimant was assigned to the 7:00 A.M. to 3:30 P.M. shift. On the afternoon of April 13 Claimant was informed by telephone that his shift had been changed to 3:00 P.M. to 11:00 P.M. until further notice. Claimant reported for work at 3:00 P.M. on the following day, April 14, 1971.

Claimant is asking for an additional four (4) hours pay at the pro rata rate for April 14 in that he claims he was entitled to eight hours of pay at time and one half on that day under rule 11 which reads as follows:

"Employees changed from one shift to another will be paid overtime for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred."

The Carrier claims that the shift change was effected April 13, 1971 and that another employee worked the 3:00 P.M. to 11:00 P.M. shift on April 13 and was paid the overtime rate. The Carrier argues that the Claimant would only have been entitled to the overtime rate if he had worked on April 13.

We do not follow the Carrier's reasoning. On April 14, 1971 the Claimant changed from one shift to another and was entitled to the punitive rate on that day. See Award 5654 (Coffey) which reads in part:

"Claimant was regularly assigned to work 8:00 A.M. to 4:00 P.M. Wednesday through Sunday, rest days Monday and Tuesday.

Carrier changed Claimant from one shift to another in order to cover a 11:00 P.M. Carman Job'C-6 vacancy, while the job was under bulletin to work Saturday through Wednesday, rest days Thursday and Friday.

Claimant reported off sick and unable to work his 'new shift' on December 20. He came out and worked on December 21 and was paid pro rata. He claims the difference in pay at the overtime rate for the 'new shift' worked by him that date.

Carrier denied his claim on the grounds that he was not available for the first shift of his changed assignment; and, therefore, forfeited his right to a punitive payment.

'Changing Shifts'

Rule 9---Employees changed from one shift to another will be paid overtime rates for the first shift of each change, except those changing from one shift to another in the exercising of seniority rights, who will be paid pro rata rates; employees working two shifts or more on the new shift shall be considered transferred.'

The dispute is over the negotiated meaning and intent of Rule 9, supra., as applied to stipulated facts.

Award No. 6521
Docket No. 6381
2-NOPB-CM-'73

The rule refers specifically to changing shifts. No reference is made to a change as assignments for the obvious reason that a change of assignments is usually accomplished in the 'exercising of seniority rights' in which event 'changing from one shift to another' does not carry a punitive rate.

Another change in shifts can be accomplished by a unilateral transfer, as here, conditioned, however, that 'employees working two shifts or more on new shift shall be considered transferred;' and, conditioned further, that 'employees changed from one shift to another will be paid overtime rates for the first shift of each change.'

Reasoned as above, the Claimant, who was changed from one shift to another by a unilateral transfer, is entitled to the punitive pay claimed, for working the first of his 'new shifts' on December 21."

We cannot, however, find any basis in the Agreement for the interest claimed.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.