

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

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6524  
Docket No. 6396  
2-N&W-SM-'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. 16, Railway Employees'  
                                  { Department, A. F. of L. - C. I. O.  
                                  { (Sheet Metal Workers)  
                                  {  
                                  { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That Moulder J. C. Jones was improperly compensated when changed from the first shift to the third shift on June 14, 1971, and on the change from the third to the first shift on June 21, 1971.
2. That Moulder J. C. Jones be additionally compensated in the amount of four (4) hours for services on June 14, 1971, and June 21, 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 waived right of appearance at hearing thereon.

This claim is based on an alleged violation of Rule 13 which reads as follows:

"RULE NO. 13 - OVERTIME CHANGING SHIFTS  
Employees changed from one shift to another will be paid overtime rates for first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred. Employees shall receive straight-time rate when shifts are exchanged at the request of employees involved; where employees are transferred from one shift to another as a result of bidding in a new job or vacancy provided for in Rule 17; where employees displaced by employees older in seniority are forced into a new shift, where employees are changed from

one shift to another to fill vacancy or new job account being the youngest employee in seniority, or where a man is assigned to a regular relief job requiring the performance of work on different shifts."

There is no dispute as to the facts. Moulder J. C. Jones was changed from the first shift to the third shift on June 14, 1971 and changed back to his regular first shift position on June 21, 1971.

It is the position of the Carrier that the shift change falls under the following provision of Rule 13 (emphasis supplied).

"Employees shall receive straight time rate when shifts are exchanged at the request of employees involved; where employees are transferred from one shift to another as a result of bidding in a new job or vacancy provided for in Rule 17, where employees displaced by employees older in seniority are forced into a new shift, where employees are changed from one shift to another to fill vacancy or new job account being the youngest in seniority, or where a man is assigned to a regular relief job requiring the performance of work on different shifts."

Throughout the handling on the property the Carrier has maintained that while there were junior men on Moulder's roster none was qualified as a steel pourer. The organization does not speak to the issue of qualifications until its rebuttal. Yet even there we find no positive assertion that the junior men were qualified.

Implicit in the use of the seniority system in assigning jobs is the issue of fitness and ability. Had the issue of the qualifications of the junior men been properly put at issue it would have been incumbent on Carrier to support its use of Claimant. In view of the record, however, we are unable to concur in the organization's claim that the agreement has been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

E. A. Killian  
Executive Secretary

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