

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

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the current working agreement, particularly Rule 11, when Carrier forced Electrician R. L. Hanselman to change shifts and refused to pay the overtime rate for his third shift change on August 31, 1974.
2. That accordingly, the Carrier be ordered to additionally compensate Electrician R. L. Hanselman four (4) hours at his straight time rate of pay.

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 employees 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.

The subject claim is based upon the alleged violation of Rule 11, of the current working Agreement, when the carrier allegedly forced claimant to change shifts without payment of the overtime rate for his third shift change on August 31, 1974.

Rule 11 - Paragraph 1, provides:

"Changing Shifts. - 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. This will not apply when shifts are exchanged at the request of the employees involved."

Much has been asserted in the partisan submissions as to the circumstances preceding the posting of Bulletin No. 78, dated August 29, 1974; the Carrier alledging that in the Spring of 1974, the then Local Chairman agreed verbally to certain arrangements made whereby a change in forces could be made to accommodate the performance of necessary electricial work on Amtrak Train No. 82 without posting a bulletin. The need for the change was the result of a change in the schedule of Train No. 82 that made its arrival and departure time overlap the changing of shifts at 7:30 AM. Prior to this change in train schedule during the summer of 1974, new Local Chairman requested that the positions affected by the foregoing change in forces be bulletined. A letter dated December 16, 1974, Employees' Exhibit "C" of their submission, from the General Chairman to the Carrier states, in part:

"Local Chairman Cobb was completely within his rights and acting in accordance with the current agreement in requesting the positions be readvertised as the changes were made improperly in the spring of 1974.

For your file and information side pocket or so called mutual agreements are not binding on this organization as I had no knowledge of such an agreement. The undersigned will not condone or allow side pocket agreements that are in violation of our current working Agreement.

Mr. Wright in his letter on page one states, on August 29, 1974, bulletin No. 77 was posted to abolish the positions.....

Therefore, we know that the above was done in compliance with Rule 23 (e) and forced Mr. Hanselman (claimant) to exercise his seniority due to being displaced by a senior employee."

It should be pointed out that the issue presented to this Board in the subject case is not whether the current working Agreement was violated by the changes in positions occurring in the Spring of 1974 or even whether such changes were made pursuant to a "side pocket or so called mutual agreement." The issue before us is whether the current working Agreement, particularly Rule 11, was violated when, as the result of Bulletin No. 78, it became necessary for claimant to change shifts account having been "displaced" by a senior employee through the exercise of seniority as provided in Rule 15 (e), on or about August 31, 1974, without being paid the overtime rate as referred to in Rule 11 of the current working Agreement.

Additionally, the above referred to letter of December 16, 1974, if nothing else, clearly establishes the fact that subject bulletins were issued at the request of the Local Chairman. Certainly, there is nothing in this record that shows conclusively that the issuance of the subject bulletins and the resulting shift changes involving the claimant was done for the convenience of the Carrier; on the contrary, it is clear that absent the

request of the Local Chairman the Carrier would not have issued Bulletins No. 77 and 78 in the first place.

It is significant to note that there were several employees, including the claimant, whose positions were affected by the issuance of Bulletin No. 78 account of the exercise of seniority by senior employees. The claimant, himself, exercised his seniority on a position to which his seniority entitled him, albeit on a different shift, account of having been displaced through the exercise of seniority by an employee senior to him. This procedure is precisely the action covered by Rule 15 (e), which states in pertinent part:

".....an employee whose job is abolished, or who may be displaced by other causes, will be permitted to exercise seniority on any job occupied by a junior employee on his seniority list." (emphasis added)

It is the view of the Board in this case that it was Claimant's exercise of his seniority that resulted in the change in his shift and not a change in shift that necessitated his exercising his seniority. The Board recognizes that divergent views have been expressed by numerous Awards of this Board and has carefully examined those opposing Awards cited by the parties. This examination leads us to support the Awards cited by the Carrier and refers the parties to Award No. 6344, Second Division, in particular, as it relates to a dispute involving the identical Rule at issue here and a claimant who was displaced through the exercise of seniority by a senior employee and thereby exercising his seniority on a position on a different shift. That Award sets forth, in simple terms, the principle that states:

"The purpose of this rule (Rule 13, which is Rule 11 in subject case) as interpreted in prior awards is to penalize Carriers when they indiscriminately change shift assignments of employees. The overtime rate penalty, however, does not apply when employees are exercising seniority or changing shifts for their benefit." (Also see Awards 6279, 6119, 5409, 5045, 4277, 4279 and many others)

We do not find that the Claimant's change in shift assignment was the result of indiscriminate action by Carrier or that the Agreement was violated.

A W A R D .

Claim denied.

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Award No. 7251
Docket No. 7099
2-SCL-EW-'77

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of March, 1977.