

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 D. C. Spivey to change shift and refused to pay the overtime rate for his first shift change on September 3, 1974.
2. That, accordingly, the Carrier be ordered to additionally compensate Electrician D. C. Spivey 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant in this dispute alleges violation of Rule 11 in Carrier's failure to pay the overtime rate when the Claimant changed shifts on September 3, 1974, following his displacement by a more senior employee in his regular first shift position.

Rule 11, Paragraph 1 reads as follows:

"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."

Since the Claimant did change from "one shift to another," the remaining question is whether the shift change came "at the request of the employees involved" -- thus bringing into play the exception as to overtime payment for shift change.

The Board reaffirms its stand in Award No. 7251 (Roadley), covering a different employee in the identical situation. Claimant moved from one shift to another in the exercise of his seniority and thus qualified the situation as being "at his own request" and not simply at the convenience of or at the specific direction of the Carrier.

While Award No. 7251 (Roadley) covers the same situation and is applicable here, further discussion perhaps is required as to the Carrier's argument that the various changes in shift assignment took place because the Organization's Local Chairman "requested" the posting of certain positions. This Board does not accept this argument. The Carrier's response in meeting the issue raised by the Local Chairman was simply to follow the terms of the Agreement between the parties as it then saw it to be. A Local Chairman's entreaty to have the Carrier follow certain required procedure does not excuse the Carrier from meeting the later consequences of its contractual obligations, if there be any. For other reasons, however, the Board finds no violation by the Carrier of the overtime pay provision.

A distinction may be drawn between this case and Award No. 7258, in which the Claimant was specifically directed by the carrier to protect a different shift temporarily.

A W A R D

Claim denied.

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 29th day of April, 1977.