

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Electrical Workers)
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the Current Agreement Electrician W. G. Franklin was improperly paid by the Carrier for changing from one shift to another on August 22, 1977.
2. That, accordingly, the Carrier be ordered to additionally compensate W. G. Franklin, electrician, four (4) hours at the straight time rate of pay for August 22, 1977.

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 is a claim for premium pay brought by an electrician under Rule 10(a) of the applicable agreement. The claimant was a radio maintainer at the carrier's Avon Yard in Indianapolis, Indiana and worked the 11:00 p.m. to 7:00 a.m. shift until August 19, 1977. On that date claimant was displaced by a more senior electrician whose position had been abolished. Several days later, claimant obtained a Radio Maintainer position at Hill Yard working the 7:30 a.m. to 4:00 p.m. shift. This claim is based on the change from the 11-7 trick to the 7:30-4 trick.

The organization contends that the claimant was compelled to change shifts to maintain a job with the carrier. Further, because the shift change was a result of the carrier's unilateral act of eliminating the senior electrician's position, the claimant is entitled to an additional four hours straight time pay for the first shift he worked after the change.

The carrier proffers three arguments. First, the claim failed to specify a date of occurrence so that the claim should be dismissed under Rule 4-0-1(a). Second, Article VII, Rule A-1(c) of the March 11, 1976 Agreement supercedes

Rule 10(a). According to the carrier, the rule requires a reduction in force before premium pay is awarded for a shift change due to displacement. The carrier argues there was merely a rearrangement of the work force since the number of radio maintainers remained constant. Third, the carrier argues that since the claimant voluntarily requested the shift change, he is not entitled to overtime pay.

Even a cursory review of the record reveals that the original claim sufficiently described the date of occurrence. The claimant's initial letter states the dispute arises from working his new shift on August 22, 1977. The inadvertent omission of the date of the claim in the Local Chairman's letter of September 13, 1977 is not fatal since the carrier had been previously notified of the date of claim. On the property, the carrier was acutely aware of the exact date of the claim.

Next, we must consider the relationship between the March 11, 1975 supplemental agreement between the Electricians and the Consolidated Rail Corporation and the current collective bargaining contract. If the terms of Article VII are in conflict with Rule 10, then Rule 10 must fall. However, an examination of Article VII demonstrates that the parties intended that it apply narrowly. The introduction to Article VII states:

"The following rules shall become effective upon conveyance and shall supercede only those provisions of the former railroad agreements with respect to the advertisement and award of positions and seniority:" (Emphasis added).

Article VII of the March 11, 1975 agreement only addresses advertisement and award of positions and does not abrogate employees' right to premium pay for shift changes. The third paragraph of Section A-1(c) of Article VII actually supplements Rule 10. There is no language in Article VII which expressly limits the entitlement of premium pay to those situations where displacement is a result of a reduction in force.

Therefore, Rule 10 continues to govern other types of shift changes including shift changes (such as the one presented to us here), resulting from displacement without a reduction in force. Rule 19(a) of the applicable agreement states:

"Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two or more shifts on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

There is a plethora of prior cases supporting both sides of the issue. Some awards deny premium pay stating that a displaced employee who exercises his seniority is voluntarily asking for another position. Other awards grant overtime pay since a displaced employee is faced with an unconscionable dilemma. Does he request a new position which entails a change in shifts or lose his livelihood? (Compare: Second Division Awards Nos. 7675 (Scearce); 7366 (Wallace);

7291 (Marx); 7251 (Roadley); with: Second Division Awards Nos. 7258 (Marx); 7339 (Wallace); 4265 (Anrod) and 466 (Swacker). Thus, precedent is of little value in deciding this case and concomitantly our ruling on this claim will be of little assistance to this Board in adjudicating similar cases in the future. Instead, claims involving a change in shifts must be judged on a case by case basis recognizing the peculiar facts of each claim.

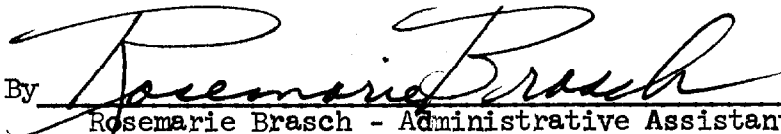
After reviewing the surrounding circumstances of this claim we conclude, for two reasons, that the claimant is entitled to premium pay for the first shift on August 22, 1977. First, the act which proximately caused claimant to be displaced was the carrier's elimination of the more senior employees' position. The ultimate source of the claimant's shift change was unilateral action by the carrier. If the carrier had not instituted a rearrangement of its work force, claimant would have continued to report to the third trick at Avon Yard. Second, because the claimant's displacement resulted solely from the carrier's decision to rearrange positions, the claimant's change of job to the Hill Yard was a reaction to carrier conduct rather than an informed and premeditated request for a new position. In addition, the carrier concedes that there was no reduction in force and so the claimant's reaction was reasonable. He naturally requested the position at Hill Yard. This particular shift change is covered by Rule 10(a). Therefore, the claimant is awarded four hours of straight time pay at the rate in effect on August 22, 1977.

A W A R D

Claim is sustained to the extent consistent with our findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1980.