

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. (a) That Carmen R. L. Hinton, K. A. Hargrove, B. R. Jeffery and S. S. Allen after working the First Shift 7:00 AM thru 3:00 PM, on April 26, 1979, they were instructed by Carriers Supervision to report to the Second Shift 3:00 PM, to 11:00 PM, on April 30, 1979, their first day of change of shifts.  
  
(b) And Carman C. Howard was working the First Shift on May 10, 1979, and he also was instructed by Local Supervision to report to the Second Shift on May 14, 1979, and was denied the change of shifts rate of time and one-half.  
  
(c) Also, Carmen J. L. Haneox and F. N. Hall, Jr., who were working the First Shift on May 17, 1979, and were instructed by Local Supervision to report to the Second Shift on May 21, 1979, and were denied the change of shifts rate of time and one-half.
2. That Carman R. L. Hinton, K. A. Hargrove, B. R. Jeffery and S. S. Allen be compensated the difference between the straight time and time and one-half rates for April 30, 1979, and Carman C. Howard for May 14, 1979; also Carmen J. L. Haneox and F. N. Hall, Jr., for May 21, 1979.

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.

The Claimants were furloughed effective February 1, 1979, and recalled effective April 2, 1979. Upon being recalled, the grievants worked the first shift. It is clear they were not "assigned" to bulletined positions on the first shift but in conjunction with a long standing practice they were allowed to do so pending the displacement and adjustments in forces which apparently occurred as a result of the recall.

Claimant Hargrove and Jeffery were permanently assigned to the second shift on April 26, Howard on May 10 and Haneox and Hall on May 17, 1979.

The Organization believes Rule 14A is clear in its application. They contend that the claimants never bid or requested to be assigned to the second shift. Further, they submit the Claimants did attempt to place themselves on first shift bulletin positions, however were not successful in obtaining a first shift position. Thus, they suggest they were reassigned or forced to take second shift bulletined assignments not by their own will but for the convenience of the Carrier. They cite Second Division Awards 4265 and 5695, a case where a change of shift was sustained. It stated in 4265:

"The record discloses that the Claimant changes in shifts were caused by the Carriers decision to reduce the working force. They did not change shifts of their own free will but were forced to do so by the circumstances. The only other alternative available to them was to waive their seniority rights in accordance with Rule 24 of the labor agreement and to become unemployed. Under these conditions we hold that the changes in shifts were necessitated by reasons beyond their control. As a result, they are entitled to overtime pay as provided in the first clause of Rule 13. See Awards 1329, 2488, 3006, and 3128 of the Second Division."

In 5695 it was held:

"It is undisputed that claimants originally exercised seniority by bidding on bulletins advertising positions on the second shift, which were subsequently abolished by Carrier. By contrast, claimants were required by Carrier to return to the first shift on April 6, 1966 even though the job abolishment notice posted on April 5, 1966 did not specifically order them to do so. More over, there is no probative evidence to support a finding that the claimants displaced junior employes on the first shift as urged by the Carrier. The record herein supports a finding that the change of shifts was not a direct result of the exercise of seniority by claimants, but rather a readjustment of work forces on both the first and second shifts for the convenience of the Carrier. Accordingly, the claim will be sustained. (Emphasis ours)"

The Carrier emphasizes that the employes were not assigned to authorized positions on the first shift. They were extra employes and this has not been disputed. When the second shift job came open the Claimants failed to place bids on them and in keeping with the Agreement the Carrier assigned them to the open positions. They note in this respect that the employes never protested the fact these employes were required to accept the second shift jobs. Thus the carrier sees this case most similar to Award 7675, a case where a change in shift claim was denied because the change was voluntary exercise of seniority rights.

The Board after considering the arguments has concluded this case is most similar to the circumstances in 7675. While it is true the employes in this case may have been forced to take assignments on the second shift-- as occurred in 4265--they were not changing shifts from one permanent bulletined assignment to another. The Board believes that for the purposes of this unique set of facts Rule 11 does not apply. In this case, the employes were only temporarily assigned to the first shift pending the adjustment of forces. Thus, they were there as much for their convenience as the Carrier's.

Form 1  
Page 3

Award No. 9714  
Docket No. 9094  
2-L&N-CM-'83

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November 1983.