

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( and Aerospace Workers, AFL-CIO  
( The Consolidated Rail Corporation  
( (Former Penn Central Railroad Company)

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the Controlling Agreement, particularly Rule 2-A-1 of the Agreement entered into by and between the Consolidated Rail Corporation and the International Association of Machinists and Aerospace Workers, dated May 1, 1979, when they abolished Mr. K. N. Alwine's Machinist position No. 190B, a Third Trick assignment in Department #315 of the Juniata Locomotive Shops, and he was forced to displace a Junior Machinist on Job #130, a First Trick position.

2. That accordingly, the Consolidated Rail Corporation be ordered to compensate Machinist K. N. Alwine, Man #537447, in the amount of four (4) hours for the following day - January 22, 1980.

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 employes 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 held a regular machinist position on the third trick at the Juniata Motor Shop. His position was abolished at the end of his duty tour on January 22, 1980 and he displaced a machinist welder on the first trick, effective January 22, 1980. He began his usual tour on the third trick at 11:00 P.M. on January 21, 1980, worked until 7:00 A.M. on January 22, 1980 and then immediately commenced his tour on the new position at 7:00 A.M. Since he was compensated at the straight time rate for working the first trick position, which was the first shift worked subsequent to his changing positions, he contends that he is entitled to the overtime rate for service performed on January 22, 1980. In particular, he asserts that Carrier violated Rule 2-A-1 of the controlling Agreement when it reduced the number of machinist positions at this location from 55 to 51 positions. Paragraph 3 of this rule provides:

"An employee who changes from one shift to another as the result of displacement through reduction in force will be paid overtime rates for the first shifts of such change."

Claimant avers that he was forced to change from the third trick to the first trick because of force reduction and argues that a prior resolution of an analogous dispute on the property is dispositive herein. (System Docket No. 6094.) He maintains that the affected employee was paid the overtime rate when following the abolishment of his position at the end of his tour he displaced on another trick.

Carrier contends that a realignment of forces occurred at the Juniata Motor Shop which resulted in a net gain of six (6) positions at this location. It argues the abolishment of 48 positions and the establishment of 54 new positions at this situs does not reflect a classic force reduction, but instead represents an expansion and rearrangement of forces. It avers that in System Docket No. 6094 which Claimant relies on for precedential support, a new reduction in forces occurred which is distinguishable from the employment impact herein and thus, without controlling value.

In our review of this case, we agree with Carrier's position. The basic question posed herein is whether Claimant was affected by a reduction in force when his third trick position was abolished on January 22, 1980. Claimant argues that 51 machinists positions were established when the former 55 machinist positions were abolished, thus reflecting a net loss of 4 positions. Carrier asserts that 54 positions were established after 48 positions were abolished and a realignment of forces occurred at the Juniata Motor Shop location. Claimant has not submitted verifiable statistical proof showing that a new loss in positions resulted while Carrier has submitted documentation indicating clearly that 48 positions were abolished at this situs. In addition, Carrier also submitted documentation showing that a net increase in positions occurred by the establishment of the new positions. As the moving party, the obligation to establish this proof devolves upon Claimant, but outside of assertions he has not shown conclusively that a true aggregate force reduction occurred. Moreover, while the settlement outcome in System Docket No. 6094 indicates that Carrier paid a claim when a similar situation was present, a net loss in positions resulted from the force realignment. It is in essence a statistically different case. More important, however, Claimant has not proven that a net reduction in machinist positions occurred.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984