

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employes:

1. That the Elgin, Joliet and Eastern Railway Company violated the current working Agreement, specifically Rule #91, when they improperly compensated Carman Gordon Gabriel, Jr. when he was forced to change shifts on June 15, 1981 and again on June 22, 1981.
2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate Carman Gordon Gabriel, Jr. an additional four (4) hours' pay at the pro rata rate of pay for said violation of Rule #91 on June 15, 1981 and for four (4) hours' pay at the pro rata rate on June 22, 1981, a total of eight (8) hours' pay at the pro rata rate.

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.

Owing to flood damage, the Carrier closed its Steel Car Shop at Joliet, Illinois for a one-week period from June 15 through June 21, 1981. As a result 79 Carmen were furloughed for this period, all positions in the Steel Car Shop being abolished. However, 32 positions were established for the week -- 28 to provide clean-up help and four assignments in the Train Yard. Senior employes went to the clean-up assignment, while four less senior employes -- including the Claimant -- were assigned to the Train Yard.

The Claimant had been regularly assigned to an 8 a.m. to 4:30 p.m. position. For the week of June 15, he was assigned in the Train Yard from 3 p.m. to 11 p.m., returning to his regular assignment in the following week.

Although the Carrier at first paid the Claimant at the overtime rate for his first-day assignment in the Train Yard, this payment was later withdrawn. Nor did he receive overtime pay when he reverted to his original assignment the following week. The Organization argues that this is in violation of Rule 91 (b), which reads in pertinent part as follows:

"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 employe involved."

The Organization points out that the change in shift assignment was not at the Claimant's request, but rather was accomplished at the direction of the Carrier.

The Carrier points out that the Claimant's position, along with all others in the Steel Car Shop, was effectively abolished prior to June 15, and that the Claimant's assignment to the Train Yard (on a different shift) for the following week was simply an exercise of his seniority in lieu of being furloughed.

The Board finds, in concurrence with many previous awards, that the circumstances here are not the shift change contemplated in Rule 91 (b). While the Claimant did not "request" a change in shift, the fact is that he was without an assignment, along with many others, commencing June 15. The retention of the 32 senior employes for the following week was, in effect, an exercise in seniority to permit such employes to continue working -- although in a different position. There is no difference in substance than if a more formal furlough and seniority selection had been followed.

The Organization argues that if the carrier had followed Rule 84, Force Reduction, the employes involved would have had the privilege of "placing themselves according to their seniority" -- which might have resulted in the Claimant remaining on the day shift. This, however, is not the claim before the Board for consideration. The claim simply is whether or not the overtime provision of Rule 91 (b) is applicable here.

Because of the elimination of the Claimant's position and his assignment by seniority to another position, the provisions of Rule 91 (b) are not applicable. This is likewise true when the force was restored to original positions the following week.

Award No. 9709 and Award No. 9137, both citing earlier awards, are among recent Board awards supporting this view.

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 26th day of September 1984.