Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVSION

Award No. 10479
Docket No. 9624
2-KCS-CM-'85

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
(Kansas City Southern Railway Company
(Louisiana & Arkansas Railway Company

Dispute: Claim of Employes:

1. That the Kansas City Southern Railway Company-Louisiana & Arkansas Railway Company violated the controlling agreement and the Railway Labor Act when it failed to pay Carman C. W. Burchfield four (4) hours pay on February 24, 1981, and four (4) hours pay on March 12, 1981, account being forced to change shifts.

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.

On February 18, 1981, the Carrier abolished a Carman position and at the same time advertised a temporary vacancy, owing to illness, on the first shift. The Claimant was the junior Carman, working the third shift, and was displaced therefrom on February 24, 1981. He was permitted (according to the Carrier) or directed (according to the Organization) to fill the still-vacant first shift position up for bid. On March 12, the Claimant was assigned on a temporary basis to the third shift, where he remained thereafter when he became regularly assigned to the position on March 15, 1981.

The Claimant seeks premium pay for February 24 and March 12 under the terms of Rule 12, which reads as follows:

> "Employees changed from one shift to another will be paid overtime rates for the first shift of each change, except when changing at their own request, or when bidding in on job under provisions of Rule 13, or for shift changes included in regular relief assignments. Employees working two shifts or more on a new shift, except on regular relief assignment, shall be considered transferred...."

The Carrier argues that the Claimant is not entitled to premium pay, since he was an "unassigned" employee, in view of his job abolishment as of February 24. In this circumstance, when the Claimant was temporarily assigned to work in lieu of being furloughed, the Carrier suggests that Rule 12 does not apply.

The Organization stands on the language of the first sentence of Rule 12, pointing out that the Claimant did not "request" the change, nor was he assigned as a result of bidding.

Situations similar to this have been reviewed in many previous awards. As stated in Award No. 8414:

> "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 employes' 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."

The Board finds here that the claim should be sustained. While the Claimant was in fact offered work in place of being furloughed, the fact remains that the Carrier assigned him to positions which it wished to fill. The shift change was not at the Claimant's "own request". Rule 12 operates to provide premium pay for the inconvenience of changing shifts, with three specified exceptions. None of these is applicable here. The Claimant did not "request" the shift change; he had not won a bid; and he was not on a regular relief assignment. Provisions for an "unassigned" employee is not included in the exceptions.

The Carrier argued that Award No. 9738 is identical and should be followed. That Award dealt with a situation where an employee continued working "on an unassigned basis" instead of being laid off. However, this resulted when "the Shop Superintendent and the Local Chairman orally agreed" to the arrangement. Such special circumstance was not present in the instance here under review.

While it is true that the Claimant here had the alternative of accepting a furlough, it is equally true that by assigning him to a different shift, the Carrier filled the work assignments it required.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1985.