

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
(  
( St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company violated the current agreement on July 3, 1982 when it improperly compensated Electrician N. I. Barrow when he was forced to change shifts.
2. Therefore accordingly the St. Louis Southwestern Railway Company be ordered to compensate Electrician N. I. Barrow eight (8) hours at the rate of time and one-half for the shift on July 3, 1982.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant is an Electrician at the Carrier's Pine Bluff, Arkansas, Locomotive Maintenance Plant. In late June, 1982, the Carrier abolished several Electrician positions. The Claimant was working the first shift (7:00 a.m. - 3:00 p.m.). When more senior Electricians bumped into the first shift, the Claimant exercised his seniority right to bump into the third shift (11:00 p.m. to 7:00 a.m.). His first day of work on that shift was July 3, 1982.

The Organization asserts that the Claimant had no choice. It was either bump into the third shift or be furloughed. Accordingly, the Organization argues, the shift change was through no fault of his own and under Rule 9-1 he was entitled to pay at the overtime rate for the first shift worked.

The Carrier maintains that the Claimant voluntarily bumped into the third

shift and that he is not entitled to pay at the overtime rate under Rule 9-1.

Rule 9-1 is quoted below:

"Employee 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 new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

We note from the parties' correspondence on the property that the Carrier paid an identical claim in the past. However, one incident does not constitute a binding past practice and the Board does not view that one incident as evidence of the parties' intent in negotiating Rule 9-1.

The language of Rule 9-1 is relatively straightforward, though not pellucidly clear. Its last sentence precludes the payment of overtime for the first day worked on the new shift in situations where the employee requested the assignment. In the instant case the Claimant took action to obtain work on the third shift. He exercised his seniority rights by bumping a less senior Electrician out of his third shift assignment.

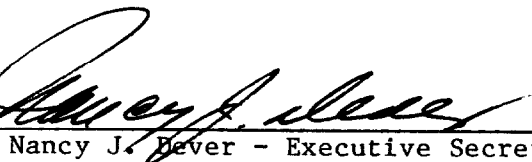
It is true that the Claimant faced the choice of bumping to the third shift or losing his employment status with the Carrier. It is also true that his predicament resulted from the Carrier's decision to abolish certain Electrician positions. Still, the hard fact remains that the Claimant voluntarily exercised his seniority to move to the third shift. And, since Rule 9-1 does not distinguish such action from others which might reasonably be considered requests for work on another shift, we find that the Claimant essentially requested work on the new shift. Accordingly, he is not entitled to overtime pay under Rule 9-1.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 16th day of April 1986.