Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12138
SECOND DIVISION Docket No. 12003-I
91-2-90-2-107

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Delbert C. Fraley, James Tackett, Charles Parker, (James Ison, Lester Ross, Ralph R. Stephenson, Chester (Allen, Larry Brinegar, George Hall, Lester Marcum, (Mike Percell, Larry Kearns, Earnest Stevens (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That the service rights of Carmen D. C. Fraley, L. Brinegar, J. Tackett, G. Hall, C. Parker, L. Markham, J. Ison, M. Purcel, L. Ross, L. Kerns, R. Stephenson, E. Stevens and C. Allen and Rule 13 of the Shop Crafts Agreement were violated, account said employees were not paid overtime rates while changing from one shift to another at the instance of the Carrier.

2. Accordingly, each claimant is entitled to be compensated for four (4) hours pay at the applicable Carmen's rate for the date of January 29, 1987.

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.

Claimants assert that they were forced from the second shift to the first shift in violation of Rule 13 which provides for payment of overtime under certain circumstances.

The Carrier contends that all second shift Carmen positions were abolished. Thus, Carrier argues that the Claimants were not forced from one shift to another; rather they assumed the only positions available to them.

As a procedural matter, the Carrier questions that this claim is properly before the Board because the Claimants' written Notice of Intent to file the Submission dated May 26, 1990 was not received by the Division until June 26, 1990, whereas the deadline for progressing the case was May 30, 1990. See Third Division Award 25130 concerning timely submission to the Board. However, it has come to our attention that a perfectly addressed Notice was forwarded to the Division, postmarked May 25, 1990. For some unexplained reason the U.S. postal authorities returned the Notice to the Claimants stamped "Return to Writer - Undeliverable as addressed - No forwarding order on file." The failure of the Division to receive the document by May 30, 1990 was clearly not the fault of the Claimants and we will consider the claim on its merits.

Although the Claimants had been assigned to the second shift, as a result of exercises of seniority following the abolishment of sixty-eight Carmen positions on the second shift, on January 28, 1987, they were given overnight notification to report to the first shift on January 29, 1987. Because five (5) days notice was not given, Claimants argue that they are entitled to overtime as provided in Rule 13.

In the Submission to the Board, Claimants mention that the Carrier did not post a proper bulletin notice and that they did not "exercise seniority" in placing themselves on the first shift. However, we search the record in vain to find that the Claimants raised or pursued the propriety of the notice and abolishment while the matter was under active review on the property. Accordingly, Claimants may not raise that issue before this Board in the first instance.

The pertinent Rule provides that "shift changing" overtime payments are not applicable when exercising seniority rights. When the Carrier abolished the second shift, it argues that the Claimants, in essence, exercised seniority in lieu of furlough.

There is ample authority that in this type of situation, payment of overtime is not required. Claimants' shift was abolished and they could assume the only shift available to them, i.e. the first shift, or cease active employment. We find nothing in the record which remotely suggests that any of the Claimants desired to cease active employment and/or accept furlough. Limited to the facts of this record, we feel that the Claimants exercised seniority. See Second Division Awards 11944 and 11750 among numerous others.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of September 1991.