

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers)
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Claim on behalf of Electricians B. Alston and N. Clark, employed by the National Railroad Passenger Corporation, Bear Maintenance Facility, Delaware, submitted by the Local Committee to the Facility Manager by letter dated October 22, 1990, as follows:

'In accordance with Rule No. 24 of the September 1975 Agreement between Amtrak and the International Brotherhood of Electrical Workers, I am filing a claim on behalf of Electricians B. Alston and N. Clark as follows:

DISPUTE: Claim of Employees.

1. That at the Amtrak Bear Maintenance Facility Amtrak violated the pertinent rules of the applicable controlling agreements between Amtrak and the I.B.E.W. when they refused to pay Electricians B. Alston and N. Clark the overtime rate of pay for time worked on September 12, 1990.
2. That Electricians B. Alston and N. Clark be compensated at the overtime rate for all time worked on September 11, 1990.

Employes Statement of Facts: Electricians B. Alston and N. Clark were employed at the Amtrak Wilmington Maintenance Facility and were working second trick in Car Shop 1. Effective at the end of their tour of duty on September 10, 1990 their jobs were abolished. Neither employee possessed sufficient seniority to exercise displacement rights on a second trick Electricians position in Wilmington or Bear. Both were forced to change shifts, and exercised seniority on first trick positions in Bear.

Position of Employees: That Amtrak violated the pertinent rules of the applicable controlling agreements between Amtrak and the International Brotherhood of Electrical Workers when they refused to pay Electricians B. Alston and N. Clark the overtime rate for time worked on September 11, 1990. Rule No. 26 of the September 1975 Agreement between Amtrak and the I.B.E.W. states in part:

'Rule 26-Changing Shifts: (a) Employees changed by the management from one shift to another will be paid overtime rates for the first shift of each such change.'

In the instant case, both employees had their jobs abolished by management, and did not possess sufficient seniority to hold positions on second trick. By abolished(sic) their positions, management effectively changed their shifts from second to first. Therefore, both Electricians should have been compensated at the overtime rate for the first shift of said change which was first trick on September 11, 1990."

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 employe 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.

There is no dispute on the basic facts of the case at bar. Claimants worked the second shift at the Carrier's Bear, Delaware, Maintenance Facility. Their positions were abolished September 10, 1990, and thereafter the Claimants exercised seniority. In their exercise of seniority the Claimants lacked sufficient seniority to displace second shift employees at Carrier's facilities. Therefore, the record indicates that both Claimants displaced to first shift Electrician positions.

The Organization argues that the Claimants are due overtime compensation under the Agreement. Rule 26(a) on changing shifts holds that:

"Employees changed by the management from one shift to another will be paid overtime rates for the first shift of each such change."

The Organization maintains that the Carrier's action of reducing the number of Electricians on the second shift forced the Claimants to involuntarily change shifts. Due to the fact that they were offered no positions on the second shift, the forced shift change was covered by Rule 26(a).

The Board finds no support for this Claim. Rule 26(a) does not apply. There is no evidence of record that the Carrier changed the Claimants' shift from second shift to first shift. The only evidence is that the Carrier abolished positions on the second shift. Rule 26(a) was written to control shift changes instituted by the Carrier and not job abolishment. The Claimants' exercise of seniority to a different shift does not trigger a penalty. Rule 26(a) is applicable when the Carrier directs the employee to change shifts and inapplicable when Claimants, in the exercise of their seniority, request a shift change. This Board has held to this position continuously and does so in the instant case (Second Division Awards 12138, 11944, 11640, 10008, 9709, 9137).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 27th day of October 1993.