

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13343
Docket No. 13150
98-2-96-2-54

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers AFL-CIO
(Northeast Illinois Regional Commuter Railroad
(Corporation (A Public Corporation)

STATEMENT OF CLAIM:

“(1.) That on April 6, 1995 the Northeast Illinois Regional Commuter Railroad Corporation (hereinafter referred to as the Carrier) posted ‘Job Bulletin No. 1’ which advised all Machinists in service that at the ‘Close of tour of duty Thursday, April 13, 1995’ KYD Electric Division Shop Machinist position ‘021-01-6100-0018’ was to be abolished, thereby triggering the ‘five (5) working days’ advance notice required by Rule 19(a).

(2.) That on April 12, 1995 the Carrier violated the terms and conditions of Rule 19(a) when they arbitrarily and prematurely ordered one (1) of the affected Machinist craft employees KYD Electric Division shop, second shift (3 p.m. - 11 p.m.) Machinist N. Folk (hereinafter referred to as the Claimant), to the exclusion of all others affected by the Carrier’s April 6, 1995 job abolishment notice, to vacate his regularly assigned second shift position and in advance of the termination time stated in Carrier’s April 6, 1995 job abolishment notice, thereafter requiring him on April 13, 1995 to report to a first shift Machinist assignment in the Carrier’s 18th Street M. U. Shop to which Claimant had previously given notice he would displace to in the exercise of seniority.

(3.) As Claimant was removed from his regular KYD Electric Division Shop second shift assignment in advance of the time stipulated in the Carrier’s April 6, 1995 ‘Job Bulletin No. 1’ job abolishment notice,

Claimant should be compensated in keeping with Rules 6 and 9 of the NIRC/IAM&AW December 16, 1987 General Rules for eight (8) hours at the overtime rate of pay for work performed on April 13, 1995 while employed on the first shift in Carrier's 18th Street M. U. Shop."

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 employee 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 were given due notice of hearing thereon.

On April 6, 1995, the Carrier posted a Job Bulletin which advised all Machinists that, at the end of the tour of duty on Thursday, April 13, 1995, the Machinist position held by Mr. R. Mabane ("Mabane") at its KYD Shop would be abolished. The abolishment of Mabane's job led to a series of job displacements, pursuant to Agreement Rule 19(a).

The Claimant, herein, was the most junior Machinist employed in the KYD Shop. He was affected by the bumps above him. Therefore, on April 11, 1995, he filed out a "Standard Application" form that triggered his bump of a junior Machinist working a first shift position at the Carrier's 18th Street Shop. The Claimant's bump to the position at 18th Street was effective April 13, 1995 (i.e., at 11:00 P.M.) Simply stated, the Organization submits that the Claimant was moved one day early; that he should have remained in his position for five days (after his tour of duty on Thursday, April 13) pursuant to Rule 19(a), which in pertinent part, reads:

"RULE 19. REDUCTION OF FORCE. (a) When forces are reduced seniority as per Rule 22 shall govern.

Except as otherwise provided in this Rule 19(b), regularly assigned employees will be given advance notice of not less than five (5) working days before abolishment of their position or reduction in force. A list of employees affected will be posted on bulletin board and a copy furnished the local committee and General Chairman.

The exercising of seniority to displace junior employees, which practice is usually termed 'rolling or bumping', will be permitted only when existing assignments are cancelled, in which case the employee(s) affected will give notification of intent to displace within twenty-four (24) hours after receiving notice of reduction to enable all employees affected to place themselves within the singular five (5) day notice."

The Organization contends that the Carrier's Shop Superintendent ordered the Claimant to report for duty at the first shift beginning at 7:00 A.M. on April 13. It argues that, pursuant to Rule 19(a), the Claimant was entitled to remain in his second shift assignment on April 13 and not to be moved until after the "close" of his tour of duty on that date.

The Board finds the Organization's contention to be persuasive. Specifically, on the facts of record presented on the property, the Board holds that the Claimant was entitled to remain in his position for five working days which would have ended on Thursday, April 13, 1995.

With respect to the penalty claim, the Claimant was paid at the straight-time rate for his work on April 13, 1995. Accordingly, the Board finds that the Claimant should be paid the difference between the overtime rate and the straight-time rate.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 24th day of November 1998.