

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

PARTIES TO DISPUTE: (The United Steelworkers of America
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(Lake Terminal Railroad Company

STATEMENT OF CLAIM:

"Claim Number MW-10-89: This grievance was filed by Etanislao Rivera Jr., Unit Griever, on behalf of M. of W. department employees R. Marrero #171 Section Gang Leader and R. Arroyo #123 Section Gang Burner. The claimants are grieving that the Company violated Rule 19: Overtime, section (h) and a 'past practice.' Details of the alleged rule violations are as follows: The above employees are claiming that on the date of October 31, 1989 they made a shift change when they went from the 7:00 am - 3:00 pm shift to the 3:00 pm - 11:00 pm shift. However, even though the Company has in the past paid the employees under this rule, they (Company) are now reversing their stand on this rule and declining to make any payments due the employees under this rule. Remedy sought for this violation; In addition to all other earnings and benefits, the above mentioned employees are requesting they be paid four (4) hours pay at their regular rate of pay."

FINDINGS:

The Third 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.

The essential facts, which are not in dispute, show that the Claimants worked a day shift from 7:00 A.M. until 3:00 P.M. and they worked the afternoon shift from 3:00 P.M. to 11:00 P.M. They claim four hours premium payment for the first afternoon shift. When so doing, the Claimants rely on past practice and Rule 19(h) which reads:

"(h). Changing Shifts: Employees changed from one shift to another will be paid overtime rates for the first shift on each change. Employees working two or more shifts on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved."

We conclude from our review of the record that the Claimants' move to the afternoon shift was a voluntary act on their part. There is no evidence in the file to support the Organization's contention that in the past the Carrier has paid a four hour premium to employees who change shifts. Rule 19(h), in our judgment, is fairly straight-forward with respect to the question of shift change. We particularly note the final sentence of the Rule. Given this language, the findings in past Awards which have addressed this same issue (see, for example, Second Division Awards 10819, 11750, 11944 and 3006), evidence that past practice supports the Carrier's positions and evidence that, in 1979, the Organization recognized that the Rule, with respect to overtime payment, did not apply. We find that the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1992.