

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10737
Docket No. 10515
2-MP-CM-'86

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 5 of controlling Agreement when they worked Carmen J. Daenen and A. Armstead to jobs that they were not assigned on a holiday and then did not allow them to complete the shift. The jobs worked were the regular assigned jobs of Carmen C. R. Monk and R. A. McCann, November 25, 1982.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman C. R. Monk and R. A. McCann in the amount of eight (8) hours each at the punitive (sic) rate. Also, to compensate Carmen J. Daenen and A. Armstead in the amount of two (2) hours each at the punitive (sic) rate.

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 dispute arose when Carrier held over two Carmen, who regularly worked on the 11:00 P.M. to 7:00 A.M. shift to perform work continuous with their assigned workday. The Carrier had, five days previously, posted a shop bulletin announcing its intention of closing down the shop "after the completion of day's work on November 24, 1982."

Due to an unforeseeable delay, the late arrival of several trains delayed the completion of the two Carmen's regular shift work. The Carrier held over the two men for an additional six hours on an overtime basis.

Claimants Monk and McCann, who were regularly assigned to the 7:00 A.M. to 3:00 P.M. shift, were not notified to work the holiday and performed no service on that date.

The Organization contends a violation of Rule 5 of the existing Agreement which states:

"Rule 5. Relief Work, Rest Days and Holidays.

"(a) Employees assigned to rest day relief positions and/or holiday work, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request.

"NOTE;

"Notice will be posted five (5) days preceding a holiday listing the names of employees assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. Local committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employees to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

The fact pattern in the instant dispute is consistent in Second Division Award 4396 and Third Division Awards 19393, 24519 and 25210, wherein the Board held it was not reasonable to expect the Carrier to remove a properly assigned employee from his job and replace him with another employee when unpredictable extra work becomes necessary to complete originally assigned shift work.

But for the Holiday Rule, there is not anything in the contract which prohibits the Carrier from holding over employees for overtime work in order to finish their jobs. Citing numerous past Awards (see 10253, 10254 and 6261), the Organization argues that Carrier has a history of wholesale violation of the Holiday Rule. In the Board's opinion the factual difference in the instant case dictates that the Holiday Rule is not the controlling factor. The Board finds that the case must be decided on the basis of the Overtime Rule.

"Rule 3. Overtime.

"(a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

"(b) Employees required to perform work on their rest days or on the following legal holidays, viz., New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sundays the day observed by the State, Nation or by Proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half."

"Rule 4. Overtime And Calls.

"(a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis, with a minimum of one (1) hour."

The Board concludes the overtime service compelled by the work in dispute was in accordance with the Agreement; and Claimants Daenen and Armstead have already received proper compensation. The Claims of Monk and McCann are denied.

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 19th day of February 1986.