

Award No. 3724
Docket No. 3605
2-P&LE-TWUOA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS
UNION OF AMERICA, A. F. of L.-C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: On Labor Day, September 1, 1958 the Carrier only worked six (6) carmen and one (1) airbrake man and two (2) helpers. The Organization has a seven-day agreement with the Carrier. This agreement was signed August 6, 1958. According to this agreement there shall be twelve (12) carmen, four (4) helpers and three (3) airbrake men work every day on the seven-day assignments.

On September 1, 1958 only the following men worked; Carmen S. Messer, J. Branchick, M. Kovach, P. Czuczman, F. Mirth and E. Filip; Helpers J. Greene and J. Petrunick; and airbrake repairman Johnson.

The following men should have also worked on September 1, 1958; Carmen M. Kowalchick, D. Whoric, G. Strickler, C. Edowski, S. Olszewski and J. J. Tomaro; Helpers G. Jencik and N. Stepek; and airbrake repairmen J. Torick and C. Nagel.

Since the Carrier violated the seven-day agreement and did not allow the employes mentioned above to work the Organization requests that these employes be compensated the time and one-half rate of pay as required by the holiday rule when worked. These employes did receive the pro-rata pay.

EMPLOYES STATEMENT OF FACTS: This case arose at McKees Rocks, Pa., and is known as Case M-224.

The organization and the carrier entered into an agreement on August 6, 1958 as to working seven-day assignments and the amount of men that would work these assignments. Nothing in this agreement says that the carrier can cut this force on any holiday.

That the carrier did cut the force which is a direct violation of the seven-day agreement.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1,

has two alternatives: It may work them, or it may not. But if it chooses the former alternative, it incurs a penalty in the form of paying time and one-half rates for the holiday hours worked."

It is the carrier's position that the above cited awards definitely and conclusively uphold the carrier's right to blank positions on a holiday when it is determined that it is not necessary to work those positions.

CONCLUSIONS: The carrier has shown that the issue here before the Board, i.e., whether or not the carrier has the right to blank seven-day assignments on a holiday, is supported not only by the rules of the applicable agreement but also by several awards of the Second and Third Divisions of the National Railroad Adjustment Board. The claimants herein, incumbents of seven-day assignments which were not worked on September 1, 1958, a holiday, were properly compensated for the holiday not worked in accordance with the provisions of the holiday rule, hence their claim is without merit.

The carrier respectfully urges the Board to deny the claim.

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 were given due notice of hearing thereon.

Claim is made for a day's pay at penalty rate in behalf of several incumbents of seven-day assignments at McKees Rocks in addition to pay received at pro rata rate for Labor Day on the ground that they were deprived of work on that holiday.

Rule 3 (h) of the Agreement provides in pertinent part:

"It is understood that holiday work will be reduced to a minimum and further this understanding does not guarantee a five-day week where such holidays occur during the work week."

A purpose of the Holiday Agreement was to relieve employes from work on holidays without loss of take home pay and to discourage holiday assignments punitive rate was required for such work when assigned. That agreement included seven-day positions.

The employes rely on a special agreement entered into on August 6, 1958 to take them out from under the general rule. That agreement provided that seven-day work assignment for McKees Rocks to be worked in accordance with an agreed upon number of employes, as there listed, which included claimants positions. In Item 1, which employes stress, it further provides:

"Seven-day forces to be increased or decreased only upon agreement with the local committee and management as business increases or decreases or as operating requirements vary."

The agreement that the specified number of employes would fill the seven-day assignments was not an agreement that such employes would be required or have the right to work differently than other seven-day assignments, and the work force was not decreased by blanking jobs on the holiday.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3724

In Docket 3605 (Award 3724) the facts of record reveal that the parties entered into agreement dated August 6, 1958, providing that a stipulated number of seven-day positions would be filled seven (7) days a week by a specific number of employes as enumerated in the agreement.

The agreement of August 6, 1958 also provides as follows:

“Seven-day forces to be increased or decreased only upon agreement with the local committee and management as business increases or decreases or as operating requirements vary.”

The carrier has unilaterally deviated from this agreement in violation of its clear cut and unambiguous terms, and the majority has erroneously supported this violation in its findings in Award 3724. We dissent.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink