



Award No. 5058

Docket No. 4896

2-MP-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the 40 Hour Week Agreement, particularly Article II, Section 1(j), when they arbitrarily established a Sunday force at Dupo, Illinois per Bulletin No. 29, dated March 3, 1964, where business had not increased, but in fact had decreased.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carmen C. Govro, M. Boyer, R. A. Taake and E. E. Hollis as follows:

a) Eight (8) hours each at the punitive rate for Sunday, March 8, 1964, in favor of Carmen C. Govro and M. Boyer and for each Sunday thereafter as long as the violation continues;

b) Eight (8) hours each at the straight time rate for Thursday and Friday, March 12th and 13th, 1964, in favor of Carmen C. Govro and M. Boyer account being deprived of working their regular assignment on these dates and for each Thursday and Friday thereafter as long as the violation continues;

c) Eight (8) hours at the punitive rate for Sunday, March 8, 1964, in favor of Carman R. A. Taake and for each Sunday thereafter as long as the violation continues account being required to work in excess of his regular assignment;

d) Eight (8) hours at the straight time rate for Wednesday and Thursday, March 11th and 12th, 1964 in favor of

Carman R. A. Taake for being deprived of working his regular assignment on these dates and for each Wednesday and Thursday thereafter as long as the violation continues;

e) Eight (8) hours at the punitive rate for Sunday March 8, 1964, in favor of Carman E. E. Hollis account being required to work in excess of his regular assignment on this date, and for each Sunday thereafter as long as the violation continues;

f) Eight (8) hours at the straight time rate for Monday and Tuesday, March 9th and 10th, 1964, in favor of Carman E. E. Hollis for being deprived of working his regular assignment on these dates and for each Monday and Tuesday as long as the violation continues.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a large force of employees at Dupu, Illinois, and on February 24, 1964, Bulletin No. 21 was posted at Dupu, Illinois advertising Positions Nos. 1, 2, 3 and 4 — jobs 2, 3 and 4 were advertised as new positions which created Sunday force on the little repair track which had not heretofore been in existence at Dupu. Assignment was made by Bulletin No. 29, dated March 3, 1964, and both Bulletin No. 21 and No. 29 were signed by master mechanic, Mr. J. W. McCaddon. Position No. 2 included two (2) jobs which made the establishment of four (4) Sunday jobs on the little repair track at Dupu where no Sunday force had been employed for many years. Business is less and fewer cars handled now than during the war years and in 1949 when the 40 Hour Week Agreement was signed. There is no justification for establishing Sunday force at Dupu and the carrier is in violation of the forty hour week agreement and Carmen C. Govro, M. Boyer, R. A. Taake and E. E. Hollis, hereinafter referred to as the claimants, are entitled to be compensated as outlined in the employees' claim. In fact no repair track force has been employed at this point on Sunday.

This matter has been handled up to and including the highest designated officer of the carrier who has declined to adjust the matter.

The agreement effective September 1, 1960, as amended, is controlling.

POSITION OF EMPLOYEES: That the forty hour week agreement was violated, particularly Article II, Section 1(j), reading:

“(j) Sunday Work —

Existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The

contract is limited to the amount he would have earned under the contract less such sums as he in fact earned. Atlantic Coast Line R. R. v. Brotherhood of Ry. Clerks, 4 Cir., 210 F. 2d 812, 815, 33 LRRM 2542. . . . Absent actual loss, recovery is properly limited to nominal damages. Oklahoma Natural Gas Corp. v. Municipal Gas Co., 10 Cir., 113 F. 2d 308. . . ."

In view of the foregoing, assuming for the purpose of discussion only, that the instant claims are supported by the provisions of the shop craft agreement relied upon by the employees, which they are not, any award issued by your Board must be limited to a wage loss suffered by the claimants, if any.

The carrier has not violated rule 1 of the agreement, the so-called forty-hour week agreement, and the claim on behalf of the four claimants must be denied.

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 waived right of appearance at hearing thereon.

The Carrier did not violate the 40 hour work week nor the current Contract when they established a Sunday force at Dupu, Illinois, on March 3, 1964.

Carrier's competitive position and Carrier's changes in amount or nature of traffic or business and its seasonal fluctuation can make work necessary by the repair track crew on Sundays.

If a repair track crew is necessary on a Sunday, the Carrier is within its rights in establishing it.

AWARD

Claim of employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1967.