

The Second Division consisted of the regular members and in addition Referee C. Robert Roadley when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Penn Central Transportation Company

Dispute: Claim of Employees:

1. That the Carrier violated the Controlling Agreement when it failed to apply the provisions of Rule 2-A-1(e), fourth paragraph, in the handling of a vacancy occurring in the Machinist position on August 6, 1973.
2. That the Carrier be required to compensate the designated Claimant for three (3) hours pay at the Grade "E" rate for August 6, 1973.

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 waived right of appearance at hearing thereon.

The facts of the matter before us are not in dispute. The Claimant was used on other than his own regular position on the date claimed. The vacancy which was thus filled by Claimant was caused by the one day absence due to sickness of Machinist Lebo. The Claimant worked the other position for more than four (4) hours.

Petitioner avers that Rule 2-A-1 (e), fourth paragraph, of the Schedule Agreement, controls; the Carrier avers that the provisions of Article 13 of the "Supplemental Sickness Benefit Agreement", effective July 31, 1973, is controlling in the disposition of this claim.

The Schedule Agreement, as amended October 15, 1960, Rule 2-A-1-e, last paragraph, states as follows:

"Except as provided in Transport Workers Regulation 2-A-4 (Rule 2-A-5 for System Federation), an employee moved from one position to another on the same shift, at the instance of Management, will receive an additional three (3) hours' pay at the straight time rate of the regular position he holds for each day he is required to work on another position."

Article 13, of the Supplemental Sickness Benefit Agreement, states in pertinent part:

"Blanking Jobs and Realigning Forces. Any restrictions against blanking jobs or realigning forces will not be applicable in situations in which an employee whose job is blanked or is covered by a realignment of forces is absent because of a disability.

Petitioner has stated that Rule 2-A-1-e is a permissive rule and not a penalty rule. The Rule requires that if the management elects to move an employee under applicable circumstances the management will pay an additional three (3) hours pay. Management could, obviously, avoid this additional payment by merely blanking the job involved, it is their option. Certainly the payment of the three (3) hours is a restriction against unilateral management action; if management chooses to move an employee management pays. The Carrier freely acknowledged that in the absence of referred to Article 13 the subject claim would be payable.

In defense of his position that the Supplemental Sickness Benefit Agreement has no application to this dispute, Petitioner has stated, "Claimant was not sick or disabled, therefore does not come under the provisions of the Supplemental Sickness Benefit Agreement." The physical condition of the Claimant in this dispute has no bearing whatsoever! Nor is there any limiting language in Article 13 to the effect that an employee absent due to disability must be qualified to receive benefits.

The language of Article 13 appears to the Board to be clear and unambiguous, and its application to the subject dispute is equally clear. Simply stated, an employee was absent due to disability (sick), his job was covered for the one day of absence by the claimant (a one day realignment of forces), therefore any restrictions against such realignment are not applicable under these circumstances.

Carrier has cited Award No. 1, SBA No. 836, involving the same carrier, the same Agreement provisions, but a different Organization. The issue in that dispute was decided in favor of the Carrier and we see no reason to depart from that determination and the principles recited therein. We will deny the claim.

A W A R D

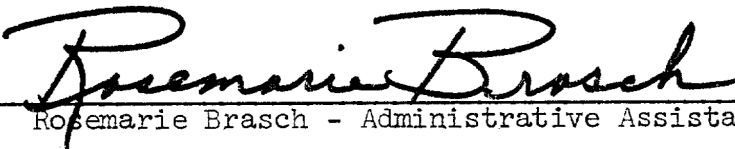
Claim denied.

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Award No. 7231
Docket No. 7087
2-PCT-MA-'77

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1977.