

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

Parties to Dispute: (System Federation No. 25, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated the controlling agreement when they deprived Electrician Dale Greenway of his contractual right to perform service on December 17, 1973, his second Rest Day.
2. That accordingly the Carrier should additionally compensate Electrician Dale Greenway eight hours (8') at the double time rate for December 17, 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.

At issue is whether the Carrier violated the Agreement when he assigned Electrician Engle to work the second of Claimant's rest days (December 17, 1973) instead of allowing Claimant to work the assignment. Both Claimant and Engle were regularly assigned Electricians on the same seniority roster; Engle's assignment being Monday thru Friday - 8:00 a.m. to 4:30 p.m. - rest days Saturday and Sunday, Claimant's assignment being Tuesday thru Saturday - 12:00 midnight to 8:00 a.m. - rest days Sunday and Monday. Claimant's position does not have a relief assignment. The record shows that Claimant had already worked both of his rest days the preceding week, December 8 and 9, and his first rest day, December 16, of the week involved herein.

When it was determined by Carrier that it would be necessary to fill Claimant's position on his rest days of December 16 and 17 Claimant was allowed to choose one or the other of such days but not both, although he had advised of his availability to work both days. Each employee above had worked all

the days of their assignments during the week involved. Claimant elected to work his first rest day and filed claim for not being allowed to work the second rest day as well. Engle was assigned to the disputed work, he being the junior man on the seniority roster. Carrier avers that the assignment was filled in accordance with Rule 11, Rule 6 (b) and the agreed upon interpretation thereof. These Rules are as follows:

"Rule 6 (b) Work on Unassigned Days - Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee." (Per Agreement of September 1, 1950)

"Rule 11 - Distribution of Overtime - When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time.

Record will be kept of overtime worked and men called, with the purpose of distributing it equally among those interested in participating. In the event none of the men want to participate, junior qualified men will be assigned."

"INTERPRETATION: (of Rule 6(b) by Memorandum of Agreement dated March 22, 1954) An unassigned day is a day where no relief is provided or a holiday not included as part of any assignment. Where unassigned days are involved in any pool arrangement the work will be divided among the men in the pool in accordance with Rule 11."

Petitioner cited a letter from the Superintendent, dated February 25, 1954, in support of his position that Claimant should have been allowed to work both of his rest days, which letter states in pertinent part:

"When necessary to use an employee at overtime rate to perform the service required on unassigned days, the incumbent of the position is entitled to work regardless of whether work on the job is required on 5, 6, or 7 days. The incumbent of a position is the only regular employee that can be involved under Rule 6 (b) and he only under circumstances outlined above."

Carrier has pointed out that, in its judgement, the foregoing was superseded by the Memorandum of March 22, 1954, quoted herein. There can be no question as to which of these two documents is the more current and therefore controlling insofar as they relate to an interpretation of Rule 6(b). Aside from the fact that the Petitioner elected to construe the above February 25, 1954 letter as representing the applicable interpretation of the Rule, the fact remains that Memorandum of Agreement, dated March 22, 1954, is a bi-partisan agreement, not a unilateral letter, its effective date is subsequent to the date of said letter, and therefore one cannot read or apply Rule 6(b) without reading the Interpretation as being an integral part of the Rule. We therefore find that Rule 6(b) and the agreed upon interpretation thereof, dated March 22, 1954, is applicable and not the alleged interpretation as asserted by Petitioner.

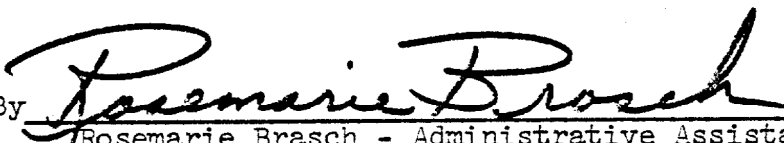
Consequently, it is clear that in applying the Rules to this case one cannot isolate Rule 11 or Rule 6(b) as interpreted, they must be read in conjunction with each other. In the light of the foregoing we find nothing in the record before us of sufficient probative value to show that Petitioner met the burden of proof of a violation of the Agreement. Nothing in this record shows that Petitioner challenged either the existence, validity of applicability of Rule 6(b) and its agreed upon interpretation as submitted by the Carrier. Under the circumstances, and in line with numerous Awards of the Board, we must accept the contentions of the Carrier as being factual and a valid defense to the claim. We shall therefore dismiss the claim. See Third Division Awards 15503, 14385, 19849, 20083, Second Division Award 6694, and many others.

A W A R D

Claim dismissed.

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 11th day of March, 1977.