

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

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 3 and Note to Rule 5 of the controlling Agreement, September 6, 1976, when they arbitrarily established a Holiday force of Carmen E. C. Schuchert, R. E. Hooch, and E. K. Hanes, Jr. (sic)
2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen J. A. Schroeder, J. F. Sansegrew, and M. R. Dietzel in the amount of eight (8) hours each at the punitive rate account of violation of September 6, 1976. (sic)

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 employees 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.

Claimants were assigned by bulletin to the "Little Repair Track". Notice was posted that that facility along with other named repair facilities would be closed on Monday, September 6, 1976 (Labor Day), which, were it not a holiday, would be a regularly scheduled work day for Claimants.

Though the posted notice abolished all jobs normally assigned to work Labor Day, on the morning of September 6, 1976, it was determined that three carmen would be required to repair freight cars which were considered "hot loads". Carrier started at the top of the seniority roster and called three carmen holding assignments at the Evans Track and the "Big Repair Track", thereby giving rise to the instant claim.

Note to Rule 5 of the Agreement reads:

"Rule 5. Note: Notice will be posted five (5) days preceding a holiday listing the names of employees assigned to work 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 the event of failure to furnish sufficient employees to complete the requirements, the junior men on each shift will be assigned." (Underlining added.)

Numerous disputes between the parties over the application of the above-quoted rule have been before this Board. In each dispute called to our attention the position of the Employees was upheld. Carrier argues, however, that the instant dispute is on a different footing. It alleges that the Local Chairman refused to furnish a list of carmen for "standby". The Employees allege that there was no specific request for a "standby" list for a specific facility.

We find that the Note to Rule 5 does not lend itself to a "standby" list. However, if we could determine from the record that Carrier did request a list of carmen for a specific repair facility, "standby" or otherwise, our decision here would be different. The Note to Rule 5 is not a tool designed for evasiveness on the part of the Local Committee to place Carrier in a vulnerable position. But from the record we cannot determine that Carrier did request a list for a specific location.

Award No. 5236 (Johnson) among others, states clearly:

"The note to Rule 1 clearly provides that when positions have to be filled on holidays they shall be filled from among those who would have worked if the holiday had not occurred."

Award No. 7704 (Marx) holds:

"In the particular circumstances related herein, the Carrier obviously could not have fully complied with the Note to Rule 5, since it could not have given the five days' notice for work requirements unanticipated until the holiday itself. But aside from this point of timing, the Board finds no justification for the Carrier to believe itself free of the requirements of the remainder of the Note to Rule 5, nor does the Carrier obviate its responsibility under

"the Note by requesting help in work assignment
from the Carmen on duty."

On the basis of the numerous awards between the parties on the same
subject matter, particularly the reasonings set forth in Award No. 5956
(Zumas), we will sustain the claim at the punitive rate.

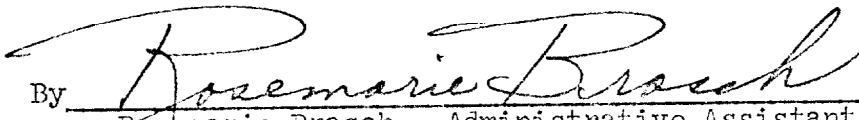
A W A R D

Claim sustained.

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 19th day of April, 1979.