

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 26 (a) and 30 of the June 1, 1960 controlling agreement when they allowed Mr. B. G. Wells to work as an electrician on December 11, 16, 17, 23, 30 and 31, 1976 while filling an Electrical Foreman's position with rest days Thursday and Friday commencing December 11, 1976 through December 31, 1976 inclusive at North Little Rock, Arkansas.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electricians J. O. Neely, E. S. Collins, H. A. Norris, P. C. Cross, L. N. Spinelli and C. P. Davis, Jr. eight hours (8') pay at the overtime rate for December 11, 16, 17, 23, 30 and 31, 1976, the days Electrical Foreman Wells worked as an electrician.

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 Carrier had vacated the position of Foreman. Pending the permanent filling of the vacancy, Electrician B. G. Wells was utilized to fill the vacancy temporarily from Saturday, December 11, 1976 until his return to his regular schedule as an Electrician after December 31. The Foreman's position was scheduled to work from 7 a.m. to 3 p.m., rest days Thursday and Friday, and Wells worked this schedule as a Foreman for the period indicated. His schedule as an Electrician was 3 p.m. to 11 p.m., rest days Sunday and Monday.

On Saturday, December 11, Wells first worked the Foreman's hours and then followed it by working as Electrician for the next eight hours. On his rest day as Foreman, Wells was permitted to work as Electrician on five days -- December 16, 17, 23, 30, and 31.

The Organization claims that this work as Electrician was in violation of Rules 30 and 26(a) which read as follows:

"Temporarily Filling Foremanship:

Rule 30. Should an employee be assigned temporarily to fill the place of a foreman he will receive the established rate of the position and be governed by working conditions and rules of such position."

"Assignment of Work:

Rule 26. (a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foreman at points where no mechanics are employed."

During the period from December 11 through December 31, Wells was temporarily assigned as Foreman and received the established rate for the position. He was therefore governed during that period by the "working conditions and rules of the position", which logically include the working schedule and assigned rest days. Since he was temporarily employed in the Foreman's position, it cannot be said that he was "regularly" employed during the same period as an Electrician. Thus, the Board finds that Rule 30 applied to Wells as to assigned rest days and that Rule 26(a) logically prohibits him from Electrician's work during the same period.

The Carrier argues that such finding would operate improperly in the instance of an employe assuming the position of foreman for a day or two, as occasionally happens, and in this instance it was not certain how long Wells would be needed. The fact is, however, that the Foreman's position was "temporarily" filled for three continuous weeks, and thus is not identical with a one-day assignment. The Carrier also argues that special provisions of the vacation Memorandum of Agreement requires the observance of Foreman's rest days when an employe serves as replacement while the Foreman is on vacation; absence of such language in general situations, the Carrier claims, permits an employe to "drop back" on rest days. The Board does not agree with this view and, as noted above, finds the practice prohibited in general under the terms of Rules 30 and 26(a).

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Award No. 7989
Docket No. 7896
2-MP-EW-'79

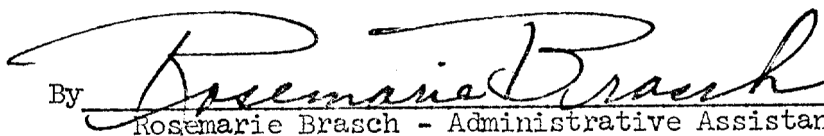
The Claim will be sustained, but only at the pro rata rate, based on many previous decisions holding that this is the proper rate when work is not performed by the Claimants.

A W A R D

Claim sustained to the extent indicated in the Findings.

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 27th day of June, 1979.