

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.
(Carmen)
{ Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company violated Note to Rule 5 of the controlling Agreement, April 8, 1977, at North Little Rock, Arkansas, when it assigned Carman S. E. Wilson to work job assigned to Carman L. W. Wise on the Holiday of April 8, 1977.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman L. W. Wise in the amount of eight (8) hours at the punitive rate for their violation of his rights under Note to Rule 5, April 8, 1977.

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.

Prior to and at the time of this dispute, Claimant was assigned to Job SR-23, Carman - Emergency City Truck with work days of Monday through Friday. April 8, 1977, was a holiday (Good Friday). The Carrier assigned employes for work on the holiday in accordance with Note to Rule 5, which reads as follows:

"Notice will be posted five days preceding a holiday listing the names of employees assigned to work on 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 event of failure to furnish sufficient

"employees to complete the requirements the junior men on each shift will be assigned beginning with the junior man."

Claimant's position was scheduled to be blanked, in accordance with this procedure, and the Claimant was therefore not scheduled to work and did not work.

On April 8, 1977, according to Carrier account, the following occurred:

"On April 8, 1977, a holiday, a derailment occurred in the north end of the bowl. Carman S. E. Wilson and M. T. Linz, were taken off the rip track to reraill this car. Before this car was rerailled, another car derailed in the north end of the bowl. After these cars were rerailled, two derailments occurred in the south end of the bowl and these same two men were used to reraill the cars."

In connection with these events, the truck usually operated by the Claimant was used by other Carmen. The Organization alleges that the truck was used throughout an eight-hour shift and that not only was it utilized to transport employes (as conceded by the Carrier) but that the equipment on the truck was also required in connection with the rerailling operations. The Carrier makes no specific denial of this.

The Board will sustain the claim, but bases its finding on the totality of events. The Carrier claims that a truck may be used just as any other piece of equipment or craft tools -- that is to say, it does not "belong" to the individual employe who is regularly assigned to it. As a general statement, the Board does not necessarily disagree with this concept. In this instance, however, there was no mere incidental use of the City Emergency Truck. There was no contradiction to the Organization's claim that the truck was used not only for transportation, but that the full range of its equipment was employed in the various rerailling operations. In other words, the Board is convinced that the truck was used virtually as it would have been employed on normal work days, and the Carrier has failed to show to the contrary. It reasonably followed that Job SR-23 was not blanked but was in fact filled. Under these circumstances, Note to Rule 5 requires the assignment of the work to the employe who would have performed it if the holiday had not occurred.

The claim will therefore be sustained in its entirety, following similar decisions by the Board in, among others, Awards No. 6094 through 6097 (Harr), which cite previous awards; and Awards No. 6199 (Quinn), 6254 (McGovern), 6260 and 6261 (Shapiro). All of these awards concern the same Organization and Carrier as in the present dispute.

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Award No. 7993
Docket No. 7933
2-MP-CM-'79

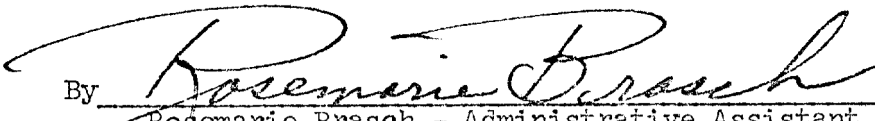
A W A R D

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 27th day of June, 1979.