

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 22, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the provisions of the controlling agreement when it improperly abolished Diesel Shop Carpenter's (Carman) job and subsequently changed rest days of said assignment.
2. That accordingly the St. Louis-San Francisco Railway Company be ordered to compensate Carmen as follows:

T. R. Knight	8 hours time and one-half for November 27, 1977
Harry Williamson	8 hours time and one-half for December 4, 1977
S. E. Simmons	8 hours time and one-half for December 11, 1977
W. P. Vaiden	8 hours time and one-half for December 18, 1977
R. R. Harrison	8 hours time and one-half for January 1, 1978
R. E. Richmond	8 hours time and one-half for January 8, 1978
L. W. Yadon	8 hours time and one-half for January 15, 1978
3. That the St. Louis-San Francisco Railway Company be ordered to change the position back to its original status with rest days of Saturday and Sunday.

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.

This dispute arose as a result of Carrier's action on November 24, 1977, wherein a Diesel Shop Carpenter's (Carmen) position, Symbol No. 549, a seven (7) day job with Saturday and Sunday rest days, was abolished and was initially rebulletined as a five (5) day position with Friday and Saturday rest days; however, on February 9, 1978, the position was again rebulletined with Monday and Tuesday rest days. When the position was originally abolished, the reason given by Carrier at that time was that there was a "change in assignment".

In this instant dispute Carrier argues that said change of assignment was initiated so as to properly meet the Carrier's needs, and such action, according to the Carrier, is the prerogative of management and is expressly permitted under Rule 1(d) which states:

"On positions which are filled seven days per week, any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

Specifically, Carrier maintains that, in its original form, the disputed position created an operational problem in that there was but one locomotive carpenter position available on Carrier's property and this position was occupied by an employee who was a regular member of the Wrecking Crew, and when that employee was away in wrecking service, Carrier had no one available to perform carman duties at the Diesel Shop. In support of its position Carrier offers Second Division Award No. 7149 wherein Referee Zumas concluded:

"The question to be resolved in this dispute is whether the provisions of Rule 1 of the Agreement was violated when Carrier established a position at McComas Street Piers tractor shop with rest days Wednesday and Thursday rather than rest days Saturday and Sunday.

* * *

It is clear from this rule that the length of the work week is to be determined by an examination of the necessary service to be performed, and not by the work week of the individual.

The record herein shows that the McComas Street Piers operations have for many years been on a seven-day schedule, and that operational requirements cannot be met on a Monday through Friday schedule. Under the circumstances, the claim must be denied."

As its final argument, Carrier contends that since employee who worked position No. 549 on the dates cited in grievance claim was the regular incumbent employee in said position, then, according to Carrier, Claimant's request for compensation is improper since "(T)here are no agreement provisions providing for a penalty payment to the Claimants, who are members of the overtime board, when work is performed by the regular incumbent on one of his assigned work days".

Claimant's Organization contends that Carrier unjustly and with complete disregard for the parties' Agreement, illegally abolished Position No. 549 without just and sufficient cause. In support of its contention Organization maintains that Carrier's action is violative of Rule 1(b) of the controlling Agreement which provides:

"On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday."

Organization maintains that Position No. 549 was a preferred position which had been in existence for more than 20 years and said position "... most generally had been held by a Carman who also performed wrecking service for the Carrier". According to Organization, Carrier's action in this dispute was motivated by Carrier's desire to force the incumbent employee from said position because he was absent on occasion due to the fact that he was a regular member of the wrecking crew. Thus, Organization contends that this dispute arose from an intra-management conflict between the Repair Track Foreman and the Diesel Shop Foreman and Carrier's actions were an improper means by which to remedy this particular problem. In support of this argument Organization maintains that Carrier's true motive for abolishing Position No. 549 is demonstrated by the fact that no change was ever made in the job duties themselves, but only the rest days were changed.

As to the compensation portion of the remedy which has been requested, Organization maintains that such a request is proper in that Claimants were those employees who should have been assigned from the overtime board to work Sundays had the disputed position not been improperly changed from a seven day assignment to a five (5) day assignment.

The Board has carefully reviewed the record in this unnecessarily complex case, and it is patently clear that Carrier acted improperly in the manner in which Position No. 549 was rebulletined and, for reasons that will be set forth in detail below, the relief requested in this particular aspect of the case, therefore, will be granted. However, in view of the specific circumstances involved herein, and because the record fails to show that Claimants, who were overtime board employees, were injured in any way or suffered a loss because of Carrier's actions, the compensation portion of the claim is dismissed for lack of a proper Claimant. (See: Third Division Awards Nos. 1754 and 19103).

As to the merits of this case, there is no question that Carrier, for reasons which are proper and in accordance with the terms of the parties' Agreement, can change rest days and make other similar alterations in its employees' work schedules (See: Second Division Award No. 7149). However, in this instant case, though Carrier's actions appear to be motivated by Diesel Shop Foreman's sincere concern in maximizing the productive capabilities of his employees, the procedure which was utilized to achieve this desirable objective was improper since it, unquestionably, infringed upon the contractual rights of the incumbent employee to bid upon a job for which he was obviously qualified and which was within his appropriate seniority unit.

By its own admission, Carrier concedes that Position No. 549 was abolished and its rest days changed from Saturday/Sunday to Monday/Tuesday for the express purpose of making the position unattractive to any employee who otherwise might be unavailable on a particular day because of some other concurrent assignment. This Board views such changes as artificial restrictions and, as such, they are indisputably improper since they would deprive an employee of his/her

contractual right to bid upon a job for which he/she in all other respects, would be qualified to perform. This particular principle has been clearly enunciated by this Division in numerous previous awards (See: Second Division Awards Nos. 4304, 6418, 6438 and 6830). Of particular significance in this regard, however, is the analysis offered by Referee Start in Second Division Award No. 5807 wherein it was concluded that:

"... when men are reasonably available, there is no contractual basis for excluding them from a wreck crew assignment, in our estimation, merely because of possible difficulties in replacing them on occasion. Rather, such problems can best be resolved by mutual agreement of the parties as, evidently, has been done at other locations.

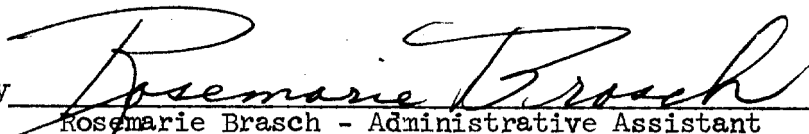
Upon application of the above interpretation to the facts of this instant dispute, Carrier is not privileged to rearrange work assignments for the sole purpose of eliminating certain employees from bidding on such assignments; nor does Carrier have the right to rebulletin a job with any restrictions thereto which are not contained in the parties' Agreement. Because these improper activities did occur, and because the incumbent employee in Position No. 549 did not file a claim in his own behalf, this Board directs the following award: (1) compensation portion of this claim is dismissed for lack of a proper claimant; (2) General Chairman of Carmen's Organization and proper Carrier representative are directed to investigate the source of controversy which gave rise to this instant dispute in an effort to remedy the problem; and (3) Carrier is directed to rebulletin Position No. 549 as a seven (7) day job with Monday/Tuesday rest days without restriction to any employee who is, or who is qualified to be a member of the wrecking crew.

A W A R D

The claim which has been presented to this Board is sustained in part and denied in part as specified in the above posited 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 23rd day of July, 1980.