

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the Note to Rule 5 of the controlling Agreement effective June 1, 1960 when they denied the employees at St. Louis, Missouri five (5) days' notice concerning Holiday work.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinists A. G. Young, R. G. Marr, C. H. Deloch, J. D. Mertensmeyer, D. W. Green, D. B. Morris, and L. Brown eight (8) hours each at time and one-half pay for Tuesday, January 1, 1980, New Year's Day.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On December 16, 1979, pursuant to a list previously furnished by the Local Chairman, the Carrier published a bulletin listing Claimants and members of certain other crafts to work the first shift on the New Years holiday (January 1, 1980). The bulletin also constituted notice to other employees that they would be required to work on the second and third shifts on January 1, 1980. On December 28, 1979, the Master Mechanic posted a bulletin cancelling the first shift of the New Years Day work schedule. Claimants, therefore, did not work on the holiday. Each Claimant seeks double time pay for January 1, 1980 contending the December 29, 1979 bulletin was not timely issued.

On the property, the Organization relied exclusively on the Note to Rule 5 of the applicable agreement to support its argument that the Carrier is required to give five days notice (prior to a holiday) that it is rescinding a prior bulletin which has designated certain employees to work on a holiday. According to the Organization, since the December 29, 1979 bulletin was issued only four days before New Years Day, the December 16, 1979 bulletin was not timely cancelled and

therefore, the Claimants were entitled to be paid as if they had worked on January 1, 1980.

The Carrier contends that it did not arbitrarily cancel the first shift for New Years Day but it subsequently determined that connecting railroads were substantially curtailing operations which eliminated the need for Claimants to work on the holiday. The Carrier interprets the Note to Rule 5 as imposing a duty to give advance notice to those employees who must work on a holiday. However, the Carrier asserts there is no language in the Note which could be construed to mandate five days advance notice to those workers, like Claimants, who would not be working a holiday.

The issue presented by this Claim is how the Rule 5 Note should be interpreted and applied to the particular facts of this case. The Note to Rule 5 states:

"NOTE: Notice will be posted five (5) 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 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 beginning with the junior man."
(Emphasis added.)

The Note to Rule 5 is intended to provide employees with at least five days advance notice that they must work on a holiday so the employees can accommodate their personal lives with the necessity of working on a holiday. While the Carrier need not provide any type of notice to those who will not be working on a holiday, the Carrier's obligation under the Rule 5 Note as to those workers scheduled for holiday work continues after the appropriate notice has been given. Second Division Award No. 7704 (Marx). Those employees originally scheduled to work on a holiday but who do not work because the Carrier cancels the original schedule may have a legitimate cause to complain. Second Division Award No. 7443 (Wallace).

To further the underlying intent and purpose of the Rule 5 Note, employees scheduled to work on a holiday are entitled to some notice that their holiday schedule has been amended. In this case, the Carrier obviously realized that some notice was necessary since it did post a bulletin cancelling the first shift four days before January 1, 1980. However, the five day time limitation for giving notice applies to scheduling holiday work and not to the cancellation of shifts previously scheduled. The question, thus, is whether the Carrier's December 29, 1979 notice was made within a reasonable time before the holiday. What is reasonable must be viewed on a case by case basis by looking at all the surrounding circumstances. Factors and circumstances to consider include: the amount of actual notice given (prior to commencement of the holiday shift); the hardship on individual employees arising from the cancellation; and presence of legitimate, good faith reasons for the cancellation.

After carefully reviewing the record in this case, we conclude the Carrier provided the Claimants with reasonable advance notice that their shifts would be cancelled. The notice was posted four days before the New Years holiday which gave the Claimants enough time to adjust to the cancellation without undue hardship. The record does not disclose any abuse of Rule 5 on the Carrier's part since the cancellation of the first shift resulted from a good faith determination that the reduction in overall railroad operations vitiated the need for Claimants to work.

Our decision denying this claim is confined to the peculiar facts of this case on this property.

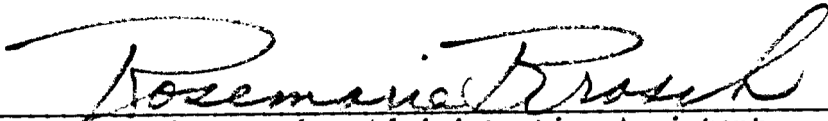
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.