

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railway Company violated the terms of our Current Agreement particularly Rule 22(a), when they failed to allow Superior Carmen E. Koski and R. Perrson to work their regular assignment on December 24, 1982.

2. That, accordingly, the Burlington Northern Railway Company be ordered to compensate Carmen Koski and Perrson in the amount of eight (8) hours at the time and one-half (1.5) rate at the appropriate rate for December 24, 1982.

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 employees 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 dispute herein involves interpretation or application of Rule 22(a) of the applicable Agreement, which rule reads:

"RULE 22. REDUCING HOURS OR FORCE

"(a) When it becomes necessary to reduce expenses, forces will be reduced. When forces are reduced, employees will be laid off in reverse order of their seniority, employees remaining in service to take the rate of the job to which assigned. When a holiday occurs in the assignment of the employee's workweek the work hours for that assignment will be thirty-two (32) hours, except for those employees who are given four (4) calendar days' advance notice that they will work."

The record shows that a notice was posted on December 17, 1982, by the General Foreman Cars:

"Superior, Wisconsin Car Dept.

"December 17, 1982

"ALL BULLETIN BOARDS:

"All carmen in Allouez Yard, Superior Yard and Duluth Yard will work their regular assigned positions on December 24th, December 25th and January 1st.

R. E. Olson
General Foreman Cars."

On December 21, 1982, further notice was posted:

"Superior Car Dept.

"December 21, 1982

"TO ALL CARMEN AND CAR FOREMEN:

"Have received a new up date concerning holiday schedules.

"All positions will be blanked for the days of December 24, December 25 and January 1.

"Duty Foremen will use overtime board to call people as needed. This includes all yards - Duluth, Superior and Allouez.

"R. E. Olson
"General Foreman - Cars."

The Organization contends that the notice of December 21, 1982, did not meet the four-day notice requirement contained in Rule 22(a) and that Claimants should have been permitted to work on the December 24, 1982, Holiday.

Before discussing the merits of the dispute, we find that the claim in behalf of Carman R. Perrson is moot. It is not disputed that Perrson accepted a separation payment in the amount of \$35,000.00 on April 14, 1983, and in doing so he surrendered his right to any and all claims against the Carrier.

As to the merits of the dispute, the Board cannot agree with the contention of the Organization as to the interpretation or application of Rule 22(a). The rule is clear in providing

"When a holiday occurs in the assignment of the employee's work week, the work hours for that assignment will be thirty-two (32) hours, except for those employees who are given four (4) calendar days' advance notice that they will work."

The rule does not provide for four (4) calendar days' notice to employees when their assignments are not to work. It requires four (4) calendar day's notice only when they "will work". The notice posted on December 21, 1982, effectively rescinded the prior notice of December 17, 1982. The Carrier was within its right in rescinding the December 17, 1982, notice when it found that operating conditions had changed. In the on-property handling, and in submission to this Board the Organization contends:

"It is our position that the Carrier is without Agreement authority to arbitrarily change back to a thirty-two (32) hour week with only a three-day notice."

It has been stated repeatedly by awards of the National Railroad Adjustment Board that Carrier's managerial rights are restricted only to the extent they are limited by the Collective Bargaining Agreement.

"...The terms of a collective bargaining agreement do not establish an employer's rights, they limit them." (Second Division Award No. 8352).

"This Board has long held that Carrier has the right to work or not work employees on holidays, absent specific rules to the contrary." (Second Division Award No. 7478.)

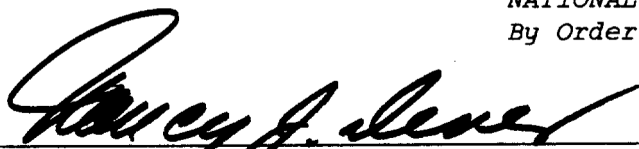
There was no violation of the Agreement by the Carrier. The claim in behalf of Carman R. Perrson will be dismissed. The claim in behalf of Carman E. Koski will be denied.

A W A R D

Claim in behalf of Carman Perrson is dismissed; claim in behalf of Carman Koski is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of November 1985.