

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
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(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That the Carrier has violated Rule 1(f) of the current Motive Power and Car Department Agreement.
- (2) That one Sheet Metal Workers regular relief position be established at the San Jose Roundhouse as provided by the current Agreement.

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 employes 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 instant dispute concerns the establishment of a regular relief position for a sheet metal worker at the Carrier's San Jose roundhouse. At the time the claim was filed there were three sheet metal workers employed at this location; they work a five-day shift, with one assigned to each of the Carrier's three daily shifts, except for the third shift on Fridays. Apparently the other crafts in the same department work a seven-day week, although there is a substantially smaller work force on the weekends. The sheet metal workers constitute the only craft in the department which does not have a regular relief position.

On November 11, 1982, the Organization's local chairman filed a claim that Rule 1(f) of the general contract was being violated because there was no regular relief assignment for the sheet metal workers. Rule 1(f) states:

"Rule 1(f) - Regular Relief Assignments. All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under individual agreements."

On February 25, 1983, the Organization filed another claim for a relief position, this time based upon the National Vacation Agreement. The Carrier treated the second claim as part of the first, rather than as a separate claim. The Organization has continued to treat them as two separate claims, however, and has appealed them separately to the Board. Only the claim filed under the general labor agreement is before the Board at this time, however, and the Carrier argues that by presenting two separate claims for the same relief position, the Organization has impermissibly "split" a grievance.

The Board concludes that rendering an opinion on this claim does not constitute an unnecessary piecemeal handling of a single dispute, even if the Organization is demanding a single relief position under two separate claims. There is no possibility of a res judicata problem here because the Board has not rendered a decision on the other claim at this time. Furthermore, even if the Board were to reach a different conclusion on the other claim, this would not necessarily create an inconsistency, because the Organization brought the claims under two separate labor agreements and the parties' rights and obligations under the two agreements possibly may not be identical. Consequently this Board will not dismiss this claim on the grounds that another similar claim has been filed.

Proceeding to the merits of the claim, the Board concludes that Rule 1(f) does not require the establishment of a relief position in this case. The Board concurs with the position expressed in Award No. 4261 that:

"... the Section does not obligate the carrier to establish such a regular relief position if sufficient work is not available for five days per week.... Any other construction would require the Carrier to employ a regular relief employee five days per week even though on some days he would be idle."

In the claim before the Board the Organization has not presented any evidence that there is enough sheet metal work or other work to occupy a relief worker for even one additional day per week, much less for five days.

The Organization states that "it is obvious the work of the Sheet Metal Workers goes on just the same on Saturday and Sunday as does the work of the other crafts, and that the work of the Sheet Metal Workers is being transferred to employees of other crafts not covered by the Agreement." In fact it may be that some sheet metal work does occur on the weekends, since the Carrier requires at least one sheet metal worker on every other shift (except third shift on Friday) during the five-day work week. However, the Organization has presented no factual evidence to support its claim about weekend sheet metal work, and has brought to our attention no provision of the contract requiring a joint check to determine whether such work is being performed. Therefore, the Board is left only with its own conjectures and the Organization's assertions and these are insufficient to sustain a claim. (Second Division Awards Nos. 7843 and 7610).

Furthermore, even if the Organization were to prove that sheet metal work was being performed by employees in other crafts on the weekends, the Board could not grant the relief the Organization requests. As we stated earlier, if Rule 1(f) is mandatory at all, it does not require the establishment of a

relief position when there is less than five days of work available; proof that some sheet metal work is available on the weekends is not proof that there is enough work to create a new five-day position.

In addition, the Railway Labor Act does not confer authority upon us to grant injunctive relief. Here the Organization does not seek monetary reimbursement for individual claimants for work performed by employees who are not members of their craft. Instead, the Organization demands the creation of a new position, a form of injunctive relief, and therefore beyond the authority of the Board. Accordingly the Board cannot grant the claims sought by the Organization in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1986.