Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11034
SECOND DIVISION Docket No. 10043
2-MP-CM-'86

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

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated provisions of Rules 5 and 21 of the controlling Agreement in improperly posting bulletin on the holiday forces at Kansas City, Missouri, December 31, 1980.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen B. B. McCaugh, M. L. Stilfield, G. D. Atkins, R. L. Nichols, O. L. Dobbeleleave, J. J. Rozell, L. T. Edwards, R. H. Errara, A. A. Margro, C. C. Garvin, W. E. Shelley, R. D. Reed, R. P. Schmitz, C. A. Schoobln, S. Zicarelli, R. J. Hullenbush, T. Rizzo, L. E. Aaron, A. J. Christofano, W. A. Murray, C. Dolton, R. L. Gorrell, M. W. Carroll, J. O. Jurado, and C. C. Pescatto, in the amount of eight (8) hours each at the punitive rate of pay and D. L. Barbarick and S. Hedges for sixteen (16) hours each at the punitive rate of pay.

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 twenty-seven (27) Claimants involved in this case were employed as Carmen at Carrier's Mechanical facility at Kansas City, Missouri.

On December 24, 1980, after a canvass by the Carmen's Local Chairman, which was conducted at the request of properly authorized Supervision, the Master Mechanic posted a holiday assignment bulletin which scheduled Claimants to work New Year's Day, January 1, 1981. Said bulletin was posted in compliance with the five (5) days notice requirement which is contained in the Note to Rule 5 of the parties' Controlling Agreement.

As the New Year drew closer, Carrier determined that its January 1 operations did not require Claimants services; and, consequently, at some time after 10 A.M. on December 31, 1980, Carrier posted a second notice on the Diesel Shop bulletin boards cancelling the earlier bulletin and the holiday work of the twenty-seven (27) Claimants. As a result, Claimants did not work on New Year's Day, 1981; however, as per applicable contractual provision, Claimants were paid eight (8) hours' straight time holiday pay.

On January 21, 1981, Organization filed a Claim alleging that Carrier violated Rules 5 and 21 of the Controlling Shop Craft Agreement. The pertinent portions of those Rules read as follows:

"Rule 5 - Relief Work, Rest Days and Holidays

* * *

NOTE: Notice will be posted five (5) days preceding a holiday listing the names of employes 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 employes to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

and

"Rule 21 - Reduction of Forces

(a) When the force is reduced seniority as per Rule 25 will govern; the men affected to take the rate of the job to which they are assigned. Employes displaced through the abolition of jobs or force reductions and other employes so affected thereby will be allowed to place themselves on such jobs as their seniority entitles them to, but only such employes who are actually disturbed by rearrangement of jobs or abolition of jobs will be permitted to exercise their seniority in this manner. Positions that have been abolished (not as the result of force reductions) and reestablished within six months, the employe regularly assigned to the position at the time of its abolishment will be reassigned to the position regardless of seniority provided he applies therefor when the position is bulletined.

> (b) If the force is to be reduced, four working days' notice will be given the men affected before reduction is made and lists will be furnished the general and local committees except no more than sixteen hours' advance notice is required before abolishing positions or making force reductions under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed."

The Organization contends that the Note to Rule 5 requires the Carrier to post holiday bulletins five (5) days prior to the holiday; and that Rule 21 requires four (4) days notice before the Carrier can abolish the holiday assignment without penalty. The Organization also argues that in circumstances where there is no actual force reduction, the side Agreement of May 1, 1962, between the Carrier and the former General Chairman controls. According to the Organization, that side Agreement requires bulletins to be posted before 10 A.M. in order to be effective the following day. In the instant case, the Organization notes that the Carrier's December 31 Notice eliminating holiday work for the Claimants was posted after 10 A.M., indicating that the revised bulletin was improper, and the Claimants, therefore, are entitled to holiday pay for the day in question.

The Organization next attempts to distinguish the instant case from Second Division Award No. 9229 in which, involving somewhat similar circumstances, the Carrier's second bulletin eliminating the Machinists' holiday work was posted four (4) days prior to the New Year's Day. In Award No. 9229, in which the Claim was denied, the Board based its rationale upon precedent and determined:

> "To further the underlying intent and purpose of the Rule 5 Note, employes 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 canceling 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 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 employes arising from the cancellation; and presence of legitimate, good faith reasons for the cancellation."

In view of the foregoing rationale contained in Award No. 9229, the Organization succinctly argues that Carrier's December 31, 1980, Notice canceling holiday work in the instant case was not reasonable so as to allow Claimants sufficient time to adjust their lives without any undue hardship.

Lastly, citing Second Division Award No. 5956 as precedent, the Organization argues that the penalty rate claimed as compensation by Claimants in this case is both proper and within the remedial powers of the Board.

The Carrier disputes the Claim by arguing that Rule 21 is inapplicable since that provision applies to job abolishments and not to the mere elimination of holiday work. In support of its position, the Carrier argues that jobs are bulletined exclusive of holidays because the employees are already compensated for holiday time not worked. Additionally, no one has the right to work holidays. Therefore, according to the Carrier, forces are not reduced, no one is laid off, and no jobs are abolished as contemplated by Rule 21.

The Carrier also disputes the Organization's interpretation of the Note to Rule 5. In this regard, the Carrier contends that Rule 5 only requires five (5) days notice to employees to work holidays, rather than notice of no holiday work. The Carrier recognizes its obligation to administer Rule 5 fairly, but in accordance with Carrier's manpower requirements. Thus Carrier urges that the Board give Award No. 9229 stare decisis and deny the instant Claim. The Carrier argues that it made its force reductions in good faith and that the Organization has failed to demonstrate how Claimants were adversely affected by being permitted to spend the 1981 New Year's Day with loved ones rather than by working a holiday tour of duty.

As its final significant area of argumentation, the Carrier asserts that, without prejudice to its basic position, no penalty rate of compensation is authorized or warranted in this case (Second Division Awards 3672 and 6421).

The Board concurs with the Carrier that the teachings of prior Awards of this Division which interpret the Rules on this property, based upon similar facts in dispute, should be given stare decisis effect. Award No. 9229 cogently and thoroughly explains the underlying rationale embodied in the Note to Rule 5 as granting affected employees sufficient time in such situations in order that they could rearrange their personal schedules in compliance with the Carrier's holiday manpower requirements. Based upon this reasoning, Award No. 9229 recognized Carrier's duty to provide some Notice when holiday schedules are amended and posits the test in terms of "reasonable notice" to be determined on a case by case basis examining, among other factors: (1) the amount of actual notice; (2) the hardship that the change caused to the individual employees; and (3) Carrier's good faith reason for the cancellation.

Applying the Board's "reasonable notice" criteria to the facts of the instant dispute, we find that the Carrier's second Notice amending the holiday work schedule which was posted during the day (after 10 A.M.) immediately prior to the holiday itself, does not constitute reasonable notice. The recognized purpose of Rule 5 is to permit employees to rearrange their personal schedules so as to minimize the hardship of having to work on a holiday. Posting the amended Notice during the day of December 31, 1980, did not give Claimants sufficient time to arrange their schedules, enabling them to enjoy the New Year's Day holiday. Consequently, less than twenty-four (24) hours notice is unreasonable notice as contemplated by Rule 5 and as confirmed by Award No. 9229.

The issue now is the appropriate remedy which is to be applied.

Without a redundant recitation of the remedial policy and powers of this Division - - that we do not award punitive rates for time not worked - - and in consideration of the fact that the employees were compensated for the New Year's Day off, we hold that the appropriate remedy is to be one (1) day's pay at the straight time rate for each Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever -Executive Secretary

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