

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad violated the Note to Rule 5 of the June 1, 1960 controlling agreement when they denied Electrician D. J. Alston his contractual rights to a five (5) day notice preceding the holiday, December 31, 1985, New Year's Eve, at Houston, Texas.

2. That, accordingly, the Carrier be ordered to (a) compensate Electrician D. J. Alston five (5) days, eight (8) hours a day, at the pro rata rate for the Carrier failing to give a five (5) day notice to work the holiday; (b) the Carrier cease the practice of violating the NOTE to Rule 5 as given herein, and, (c) in addition to the money amounts claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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.

This is a contract interpretation dispute over the meaning and application of Rule 5 of the Agreement which relates to "Relief Work, Rest Days and Holidays." There is no dispute in the record on the following facts. The Local Committee was notified on December 26, 1985 that the Carrier would not require electricians to work December 31, 1985, the New Year's Eve Holiday. On December 30, 1985, by notice of Bulletin H-900, Claimant was assigned to work the New Year's Eve Holiday.

The Organization argues that the assignment violated the Note to Rule 5 which states in pertinent part:

"NOTE: Notice will be posted five (5) days preceding a holiday listing the names of employes assigned to work on the holiday... Local Committee will be advised of the number of men required and will furnish names of the men to be assigned..."

It alleges Carrier violation of the Note by failure to post the notice five (5) days prior to the holiday.

The Carrier disputes the applicability of the Note to Rule 5 in the instant circumstances. The Carrier argues that after the December 26, 1985, Bulletin it became aware of an increase in train movements which necessitated an electrician to work on New Year's Eve. Carrier denies it violated the Agreement, arguing that it complied with Rule 5(a) which states in pertinent part:

"Employees assigned to rest day relief positions and/or holiday work, or those called to take the place of such employes, will be allowed to complete the balance of the day unless released at their own request. Those called will be advised as soon as possible after vacancies become known"

It is the Carrier's position that the Claimant was called "as soon as possible" after the vacancy became known.

The Board's review of the Rule indicates that Rule 5(a) does not supersede the NOTE to Rule 5. It is the NOTE to Rule 5 which is controlling in the assignment of employees to work on the holidays. That note explicitly states that "Notice will be posted five (5) days preceding a holiday listing the names of employes assigned to work the holiday." No employee was assigned in the instant case. Only if an employee had been assigned under the NOTE (which controls assignment) and then been unable to work would there have been a vacancy requiring application of Rule 5(a). Claimant did not fill a vacancy created by proper assignment under the NOTE to Rule 5 by taking the place of another employee assigned and unable to work the holiday. The Carrier therefore violated the Agreement when it failed to post the position assigning the Claimant five days in advance of the New Year's Eve Holiday.

As to the remedy, Second Division Award 9229 made clear that each case must be considered "on a case by case basis by looking at all the surrounding circumstances." In this case, the Board notes two factors. First, the notice to Claimant was a last minute notice coming on the day before the holiday. Clearly, the Rule, supra, was created to provide five days time to allow employees to adjust their personal lives to their holiday work responsibilities. Claimant in the instant case lost the Agreement protection and

sustained some hardship. Second, the Board finds no evidence of record to uphold Carrier's need for the last minute change. Carrier argues that "there was a sudden increase in the amount of traffic to be moved." The Organization challenged that position. In the management of its business some flexibility may be required and reasonably presented. No probative evidence was ever presented to show that the Carrier's action was reasonable and made in good faith.

Accordingly, the Board sustains part 1 of the Claim. Given the particular facts and circumstances of this record, wherein the action by Carrier occurred on the day before the holiday and that the Carrier provided no probative evidence that its action was reasonable and necessary, the Board finds that Claimant is to be awarded one full days pay at the pro rata rate. All other aspects of this claim are rejected. This is consistent with the reasoning and decisions of past Awards on this property (Second Division Awards 11034, 9229, 7443).

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 February 1989.