

Award No. 1133

Docket No. 1046

2-MP-MA-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the controlling agreement and particularly Rule 21 (a), the carrier improperly deprived Machinist H. Sheeks and Machinist Helper A. E. Westcoat of their Sunday and holiday service rights, effective on and subsequent to Sunday, September 3, 1944.

(b) That the carrier be ordered to compensate Machinist H. Sheeks and Machinist Helper A. E. Westcoat at the time and one-half rate for each Sunday and holiday lost retroactive to September 3, 1944.

EMPLOYEES' STATEMENT OF FACTS: At Nevada, Missouri, prior to August 20, 1944, carrier maintained a regular seven-day-per-week assigned machinist force, consisting of 18 machinists, one Class-B machinist and 16 machinist helpers, all of whom were assigned under provisions of Rules 3-(b) and 13 of controlling agreement.

Under date of August 16, 1944, to become effective Sunday, August 20, 1944, carrier caused to be posted a bulletin identified as No. 148, copy herewith submitted, marked "Employes' Exhibit M-1", reducing from seven-day-per-week assignment to six-day-per-week assignment 4 machinists and 5 helpers. Under date of August 30, 1944, to become effective Sunday, September 2, 1944, carrier caused to be posted Bulletin No. 149, copy herewith submitted, identified as "Employes' Exhibit M", making further reduction of seven-day-per-week assignment to six-day-per-week assignment of 3 machinists and 2 helpers. Included in this group appeared names of Claimants Sheeks and Westcoat. In each instance no jobs were abolished as provided by Rule 21 of controlling agreement, dated February 1, 1939.

Previous to August 16, 1944, carrier at all times, in making reduction from seven to six-day-per-week assignments, also six to seven-day-per-week assignments rigidly respected provisions of Rules 13 and 21, respectively, of agreement. In support thereof we respectfully submit employes' Exhibits 1 to 5, inclusive, copy of bulletins, also employes' Exhibits A to E, inclusive, copies of bulletins.

POSITION OF EMPLOYEES: Rule 3-(b) of controlling agreement—

"Rule 3 (b). Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration

This agreement of October 19, 1940, while not so identified, can, nevertheless, be considered as a part of the rules of the working agreement the same as though it were written into the folds of the printed agreement.

There is no ambiguity in the language of this October 19, 1940, agreement. It states precisely that where regularly assigned positions are changed from 7-day to a 6-day assignment, the employe regularly assigned to the position as of the date the change is made MAY, IF HE SO ELECTS, exercise his seniority on any other position existing at time of change to which his seniority entitles him. This bulletin (No. 149), that was posted on the bulletin boards as information to all concerned, contained advice to the two claimants—Messrs. Sheeks and Westcoat, among others—that effective as of quitting time September 2, 1944 (Saturday) the jobs to which they were then regularly assigned were, commencing the following date (Sunday, September 3), changed from 7 to 6-day assignments. They had the option under the rules of either remaining on their regular assignments as machinists on the machinist job and as machinist helper on the 6-day assignment, or, if they so elected, to exercise their seniority on any other position held by a junior man existing on that date. They did not elect to exercise their seniority rights but by their own actions elected to stay on their regular jobs. There can be no question but what this was their right under the rules of the agreement between the organization representing the employes and the management.

The carrier, having conclusively shown that the claim presented by the organization is not supported by the rules of the agreement, feels that the employes' claim should be properly denied by your Honorable Board.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The employes contend that under the agreement the reduction of an assignment from seven to six days cannot be accomplished by bulletining such reduction as applicable to certain jobs, and that such practice is a violation of Rule 21 of the agreement. Such a result they say can be attained only by abolishing the seven-day positions and rebulletining new ones. After extended negotiations and conferences and at the instigation of the employes, the parties agreed that weekly assignments might be reduced from seven to six days merely by posting a bulletin announcing such change. See Dec. No. SC-36 and Dec. No. SC-36-1. Whether such agreement is to be regarded as an interpretation of Rule 21 (a), or as an amendment of it is unimportant. The carrier complied with it and the employes are not estopped to claim that such action constituted a violation of the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1946.