Award No. 1472

Docket No. 1389

2-SP(T&NO)-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (Texas and New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYES: (a) That under the current agreement the carrier improperly deprived the following employes

Carmen Frank Effenberger, W. D. Hendrix, J. A. Jackson, Jr., J. H. Fontenot

Carmen Helpers Lue Ella York, Nelson Byers, Lionel Alexander, Marshall Champagne, Ethel Bell, Willie Nash, Sam Jones, Neal Alton, A. Staten

of their right to work on Decoration day, May 30, 1949, in compliance with their bulletined positions.

(b) That accordingly the carrier be ordered to compensate each of the aforesaid employes in the amount of eight (8) hours' pay at the time and one-half rate.

EMPLOYES STATEMENT OF FACTS: That on and subsequent to January 1, 1949, the carrier maintained a regular seven-day per week assigned car force, consisting of passenger carmen, freight car inspectors and carmen helpers, all of whom were assigned under the provisions of Rules 3 and 15 of the controlling agreement.

Under date of January 11, 1949, the carrier posted a bulletin identified as No. 7, copy of which is submitted herewith and identified as Exhibit 1, wherein the carrier established four car inspectors' positions six days per week with Sundays off and eight carmen helpers' positions six days per week with Sundays off; under date of January 16, 1949, the carrier posted a bulletin identified as No. 9, copy of which is submitted herewith and identified as Exhibit 2, showing the successful bidders who were assigned to the positions under bulletin No. 7.

On May 9, 1949, the carrier posted bulletins identified as Nos. 90 and 94 wherein the seven day assignments were discontinued effective 4:00 P. M., May 14, 1949, copy herewith submitted and identified as Exhibit No. 3, and

it was agreed to by the parties; and that previous awards of the Second Division have denied the principle on which the claim is based.

Wherefore, premises considered, the carrier respectfully urges that the claim be in all things denied.

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.

On January 11, 1949, the carrier by bulletin assigned four car inspector positions six days per week with Sundays off and eight carmen helpers positions six days per week with Sundays off. These were new positions. On May 9, 1949, carrier by bulletin discontinued existing seven-day positions and established seven carmen helper positions six days per week with Sundays off. Claimants were occupying some of these positions. On May 28, 1949, they were informed orally that they would not work on Monday, May 30, 1949, because it was Decoration Day, a legal holiday. Claimants contend that they are entitled to one day's pay each at the holiday rate of time and one-half. The carrier, on the other hand, asserts that it was authorized to blank the assignments on a holiday by virtue of Rule 3, current agreement, which provides in part:

> "Work performed on Sundays and the following legal holidays, namely, . . ., Decoration Day, . . . shall be paid for at the rate of time and one-half.
>
> The practice of regularly assigned employees by bulletin to work on Sundays and holidays, and men called to fill their places on such regularly bulletined assignments, may be continued. In the application of amended Rule 3, it is understood and agreed the carrier shall have the right to determine the number of employees to be worked on Sundays and holidays."

Rule 3, prior to its amendment effective January 31, 1945, provided that Sunday and holiday work would be paid for at the time and one-half rate except the employees necessary to the operation of power houses, millwright gangs, heat-treating plants, train yards, running repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays, will be compensated on the same basis as on week days. It provided, also, that Sunday and holiday work was to be required only when absolutely essential to the continuous operation of the railroad. It will be noted that under Rule 3, current agreement, all Sunday and holiday work is to be paid for at time and one-half without exception. It included, however, the second paragraph herein quoted which had no counterpart in Rule 3 as it existed prior to January 31, 1945.

The carrier claims that Rule 3, as now amended, authorizes it to assign positions by bulletin to work daily or daily except Sunday, and to thereafter determine the number of employes to be worked on holidays without penalty as to holiday assignments blanked. The organization contends that the rule authorizes the carrier to determine the holidays to be worked at the time the positions are bulletined but, once bulletined to work on holidays, such holidays cannot be blanked without penalty.

Amended Rule 3 states that the practice of regularly assigning employes to work on Sundays and holidays may be continued. It then states that it is understood and agreed that carrier shall have the right to determine the number of employes to be worked on Sundays and holidays. We point out that if the interpretation of the organization be correct, there

would be no reason at all for the inclusion of the last paragraph of Rule 3 as herein quoted. Without this paragraph the carrier could assign positions on a 7-day basis per week, 6 days per week with Sundays off, or 6 days per week with Sundays and holidays off. It must be borne in mind that every part of a rule must be given a meaning if it is at all possible to do so. It will not be assumed that any part of a rule was inserted as an idle gesture.

We think the two sentences of the last quoted paragraph of the rule must be construed together. It means that carrier could continue the practice of assigning employes by bulletin to work on Sundays and holidays and subsequently determine the number of employes to be actually worked on those days. Such a construction of this paragraph of the rule gives it meaning while the construction advocated by the organization would make it a vain and useless appendage. The practice referred to, therefore, was something more than a mere authorization to make Sunday and holiday assignments. The carrier could already do that. It must have been intended to mean that the carrier could continue the practice of assigning Sunday and holiday work and subsequently determine the number of such assigned employes that would be required to work on Sundays and holidays. This had been the practice in the past and it is clearly the practice that was continued in existence by Rule 3.

We submit that a valid reason existed for the writing of the last quoted paragraph of Rule 3 as amended. If holidays were not assigned and it was found to be necessary that they be worked, the carrier would be forced to comply with Rule 8 covering the distribution of overtime. By Rule 3 the regular occupant of the position works the holiday and the carrier is assured of a qualified occupant of the position on holiday work. See Award 1183.

There is no weekly guarantee of work rule in the agreement before us. The assignment of the position by bulletin for 6 days per week with Sundays off, does not guarantee employment on holidays when notice of the lay-off has been given. This was expressly decided by Award 836. The employes in the case before us were notified on May 28, 1949, that they would not work on Decoration Day. The rule requires no particular form of notice, consequently the oral notice was adequate.

The record discloses that the directions to claimants that they would not work on Decoration Day, May 30, 1949, were in accordance with the practice long employed by this carrier. The record is replete with instances where employes assigned 6 days per week with Sundays off were not worked on holidays and were not paid. The organization contends that this was limited to the back-shops, but we point out that back-shop employes are within the same agreement as these claimants. We think the carrier acted in the case before us in accordance with the plain meaning of Rule 3, as amended and in effect on May 30, 1949. Its action appears also to have been in line with the practice existing long before the amendment of Rule 3 on January 31, 1945, which practice the amendment clearly intended to keep in force. We hold, likewise, that the application of the rule by the carrier is fully justified on the basis that to give it the meaning espoused by the organization would give no added meaning to the collective agreement in that it would be only a repetitious statement of rights already fixed by other provisions of the agreement. The record does not sustain an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1951.