Award No. 2585
Docket No. 2446
2-MKCSJA-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the assignment of Electrician W. C. Marquis was improperly changed from working Monday through Friday, with rest days Saturday and Sunday to working on a newly created position Tuesday through Saturday, with Sunday and Monday as rest days, and causing him to lose the "Holiday pay" of May 30th, 1955; July 4th, 1955; September 5th, 1955; and December 26th, 1955, provided for under the provisions of the National Agreement of August 21st, 1954.

2. That, accordingly, the Carrier be ordered to:

(a) Restore this employe to his former work-week assignment of Monday through Friday, with Saturday and Sundays as rest days.

(b) Make this employe whole by additionally compensating him for "holiday pay" of his rest days on his original assignment, at the pro rata rate of pay as per the provisions of the National Agreement of August 21, 1954.

EMPLOYES' STATEMENT OF FACTS: W. C. Marquis, hereinafter referred to as the claimant, was employed by the Milwaukee, Kansas City Southern Joint Agency, hereinafter referred to as the carrier, as an electrician at Kansas City, Missouri, on April 11, 1954. Prior to March 16, 1955, claimant was regularly assigned to the 4:00 P.M. to 12:00 Midnight shift Monday through Friday, with Saturday and Sunday as rest days.

Article 2, Section 1(f) is written in our agreement effectuating the 40-hour work week, September 1, 1949, as paragraph (f) of Rule 1-A, sheet 3 (which is on file with this Division). It reads:

"Deviation from Monday-Friday Week

If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of paragraph (b) of this rule, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, if the parties fail to agree thereon, and the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under Rule 30."

This rule is not applicable in this claim and up to now there has been no controversy about the application of this rule. The position occupied by Electrician Marquis is a 7-day position, not a 5-day position. Paragraph (d) of Rule 1-A provides:

"Seven-day positions

On positions which are filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

This position works seven days per week, being filled on the other two days by relief man W. A. Smith.

Claim should be denied and you are earnestly requested to so hold.

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 this dispute were given due notice of hearing thereon.

Claimant held an assignment to work as an electrician from Monday through Friday, with Saturday and Sunday as rest days. Carrier unilaterally changed the assignment to work from Tuesday through Saturday, with Sunday and Monday as rest days.

The Organization says that the Carrier's action amounted to the establishment of a new position and constituted a violation of Rule 14 of the Agreement which provides that, "All vacancies, or new jobs created, will be bulletined." It is asserted that as a consequence of the Carrier's violation of the Agreement the claimant was deprived of the holiday pay which he would have otherwise received for Decoration Day, the Fourth of July, Labor Day and Christmas, 1955. The demand is that claimant be restored to his former work week and that he be compensated for the holiday pay that he would have received for the above holidays that have fallen on his rest days.

Carrier says that no new job was created; that there is nothing in the agreement which prohibits it from changing the rest days of a position; and that rest days attach to the job and not the man, while the right to holiday pay is personal to the man and does not attach to the job.

It appears that the position occupied by the claimant, both before and after the change of rest days, was a seven day position. Paragraph (d) of Rule 3 provides that, "On positions which are filled seven days per week any two consecutive days may be rest days with the presumption in favor of Saturday and Sunday."

The Organization has failed to demonstrate a violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.