

Award No. 3637

Docket No. 3352

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1—That Article V of the current controlling agreement was violated and accordingly the claim should be allowed as presented.

2—That under the current agreement, effective May 14, 1957, at Lesperance Street Yards, St. Louis, Missouri, the Carrier improperly changed the work week and rest days of Car Oiler G. A. Gober, from a work week of Tuesday through Saturday, rest days Sunday and Monday, hours 4:00 P. M. to 12 Midnight, to a work week of Monday through Friday, rest days Saturday and Sunday, hours remaining the same (4:00 P. M. to 12 midnight); also the Carrier improperly changed the work week of C. R. Nichols from a work week of Saturday through Wednesday, rest days Thursday and Friday, hours 4:00 P. M. to 12 midnight, to work week Sunday through Thursday, rest days Friday and Saturday, hours remaining the same (4:00 P. M. to 12 midnight).

3—That accordingly, the Carrier be ordered to compensate Claimant G. A. Gober for eight (8) hours at the straight time rate for Saturday, May 18, 1957, and each work day thereafter as long as the violation continues since he was not permitted to work Saturdays, which were one of his regular assigned work days.

a) Claim in the amount of eight (8) hours in favor of claimant G. A. Gober at the time and one-half rate for Monday, May 20, 1957, because he was required to work one of the rest days of his regular assignment and for each day he is required to work on one of his assigned rest days.

4—That accordingly, the Carrier be ordered to compensate claimant C. R. Nichols for eight (8) hours at the straight time rate

for Saturday, May 18, 1957, for being deprived of working one of his regular assigned work days and for as long as the violation continues.

a) Claim in the amount of eight (8) hours in favor of claimant C. R. Nichols at the time and one-half rate for Thursday, May 23, 1957 for being required to work one of his regular assigned rest days and for all subsequent days he is required to work on his assigned rest days.

EMPLOYEES' STATEMENT OF FACTS: Failing to reach satisfactory adjustment of this matter with Car Foreman, Cummings, and not receiving his reply within the sixty days time limit, we ask that this claim be paid for violation of Article V, paragraph 1(a) of the agreement of August 21, 1954, and we herewith refer your Honorable Board to Local Chairman Edward's letter of June 17, 1957, appealing this case to Mr. Cummings, herewith submitted as employees' Exhibit A, and Mr. Cummings' reply of September 11, 1957, herewith submitted as employees' Exhibit A-1.

In appealing this case to Master Mechanic Bechel he made no mention of the violation of Article V, paragraph 1(a); however, the employees again wrote him and advised him of this fact and he was further in violation as he has not declined or adjusted this claim within the sixty day time limit. The case was first appealed to Mr. Bechel under date of October 11, 1957, and he finally declined it on December 12, 1957, and the employees herewith submit Mr. Bechel's letter of declinment as Exhibit B. Mr. Bechel not only failed to decline this case within the sixty day time limit, he failed to give any reason for declining the claim. After again writing Mr. Bechel on this matter and calling his attention to the violation of the time limit, he replied by stating: "the claim is respectfully declined."

Chief Mechanical Officer Christy, in declining this case stated in his letter of February 12, 1958, herewith submitted as employees' Exhibit C:

"While we agree, reply should have been made to the original claim within the 60 days time limit, we do not agree that penalty payment is required for claims lacking proper merit."

In conference the Carrier asked if we were holding them to Article V, paragraph 1(a) of the August 21, 1954 agreement and the undersigned advised them we would be willing to compromise if the claimants were willing; however, the carrier was not agreeable to a compromise.

At Lesperance Street Yards, St. Louis, Missouri, on May 14, 1957, notices were posted, effective May 18, 1957, that the assignment of Claimant G. A. Gober would be as follows: work week Monday through Friday, rest days Saturday and Sunday, hours 4:00 P.M. to 12 midnight. Claimant Gober's former work week was Tuesday through Saturday, rest days Sunday and Monday, hours 4:00 P.M. to 12:00 midnight. Notice was also posted changing the work week of Claimant Nichols from a work week of Saturday through Wednesday, rest days Thursday and Friday, hours 4:00 P.M. to 12:00 midnight, to work week of Sunday through Thursday, rest days Friday and Saturday. The notice did not make provisions for or abolish the former positions of the claimants and their work weeks were changed without compliance with the rules agreement, i.e., abolishing and reposting these jobs and giving others the privilege of bidding on the new assigned jobs. The claimants were deprived of working their regular assigned work weeks without having them changed under the provisions of the agreement. However, on December 2, 1957, these jobs were abolished and re-posted under the rules and no violation has existed since that date.

As we have pointed out initially, the employees are requesting this Division to write a new rule requiring as a part of the collective bargaining agreement the bulletining of positions when rest days are changed. The present agreement contains no such obligation and the employees are not able to show any basis in the agreement for such a contention. For that reason, this Division is entirely without authority to consider the matter and, for that reason, the request should be dismissed.

Since the request before the Division is not a proper claim or grievance, the matter falls entirely without the scope of Article V of the agreement of August 21, 1954. If your Board should not agree with the carrier in this respect, we call the Board's attention to the language of Article V of the agreement of August 21, 1954, which states that the claim or grievance shall be allowed as presented if the person making the claim is not notified of the disallowance of the claim. The claim or grievance is the claim "presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same . . ." The claim in this dispute, if your Board should disagree with the position of the carrier and consider the request of the employees a claim, is in the monetary amount of 12 hours at the straight time rate for each of the two claimants. The change in procedure requested by the employees has been granted so that the basis for the request no longer exists.

The carrier again submits that the request of the employees must be dismissed on the basis that your Board has no authority to consider the matter.

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 employee 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 carrier changed the rest days of claimants Gober and Nichols without abolishing their positions and bulletining new positions. The organization charges that Rules 13, 21 and 25 were violated when the claimants were deprived of their regularly assigned work week and that other employees were deprived of the opportunity to exercise their seniority.

Moreover, the organization contends that the carrier violated Article V, paragraph 1(a) of the Agreement of August 21, 1954 when these claims were not allowed following the carriers failure to give timely answer or reasons for declining the claims.

The Carrier contends that changing the rest days of an existing position is not a proper subject matter for a time claim and that a request for a change in the practice not required by the agreement cannot be successfully camouflaged as a time claim and progressed as such under the provisions of the basic agreement and attempt to extract penalties under Article V of the Agreement of August 21, 1954.

The Carrier is in serious error.

In the first place, a reading of rule 1, section 2(h) makes it evident that the work week as there defined does not coincide with the work week of Gober and Nichols after the Carrier's action. This rule reads: "The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work."

However, the carrier's error is in assuming that Article V of the August 21, 1954 Agreement contemplated that it could prejudge the issues presented to it as claims or grievances and refuse to answer those that it considered were not appropriate. Article V requires a denial in those instances and reasons for denying.

The claim is sustained as presented.

It should be noted that the claim is for 12 hours per week at pro rata rate for each claimant, beginning May 18, 1957 and continuing until correction was made on December 2, 1957. The amount due can be developed by checking the incidence of the rest days worked and the working days not worked for each man during this period.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1961.