Award No. 4261

Docket No. 3828

2-MP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Missouri Pacific Railroad Company (GCL) violated the controlling agreement at Brownsville, Texas when a furloughed employe was used two (2) days per week and was not filling the position of any other employe (coach cleaner).

2. That accordingly, the Missouri Pacific Railroad Company (GCL) be ordered to additionally compensate Mr. J. A. Garcia, Coach Cleaner, in the amount of eight (8) hours at the pro rata rate for February 16, 17, 18, 23, 24 and 25, 1960, and compensate Mr. Garcia in the amount of three (3) days for each week that he was not allowed to work a forty (40) hour' week until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Mr. J. A. Garcia, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company (GCL), hereinafter referred to as the carrier, as a coach cleaner at Brownsville, Texas. The claimant's hours are from 4:00 P. M. to 1:00 A. M. Sunday through Thursday, rest days Friday and Saturday. The claimant was furloughed February 1, 1960, following which he took his vacation. At the end of his vacation he was offered work two (2) days per week and did work on February 14th and 15th, but was not allowed to complete his 40 hour' work week February 16th, 17th and 18th. He was again worked on February 21st and 22nd, but was not allowed to complete his 40 hour work week February 23rd, 24th and 25th, 1960. The claimant has been worked two (2) days per week since that time, but has not been allowed to complete the 40 hour' work week of five (5) days.

As stated above, the claimant has worked continuously two (2) days per week, starting February 14th and 15th, 1960, and he is not filling the job of any regular occupant. This constitutes a force increase of two (2) days per week. The job was not bulletined, and the facts as outlined above constitute the basis of the claim.

This matter has been handled up to and including the highest designated officer of the carrier who has refused to adjust it.

fore existed. The June 20, 1949 agreement accomplished the same result. Claimant was utilized in the manner provided by the agreement. This claim is not supported by the agreement and is entirely lacking in merit. The claim must be 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.

Parties to said dispute were given due notice of hearing thereon.

The carrier operates two daily passenger trains between Houston, Texas, and Brownsville, Texas. Each train carries two coaches which are cleaned at Brownsville on seven days each week. Prior to January 30, 1960, two coach cleaners, P. Perales and J. Garcia, the claimant in this case, were assigned to perform such cleaning. Perales worked Saturday through Wednesday with Thursday and Friday as rest days and the claimant worked Tuesday through Saturday with Sunday and Monday as rest days. Effective as of said date, the carrier abolished Perales' position. Since he was senior to the claimant, he displaced the latter. Thereafter, Perales filled the position five days per week with Sunday and Monday as rest days. The claimant was offered and accepted the opportunity to perform the coach cleaning work on Perales' two rest days. He has worked on the two days each week since February 14, 1960.

He filed the instant grievance in which he contended that the carrier violated the applicable labor agreement by using him only two days per week instead of five days per week. He requested compensation in the amount of eight hours per day at the pro rata rate for three days each week in which he was not assigned to work forty hours. The carrier denied the grievance.

1. At the outset, the following requires discussion:

When the instant grievance arose in 1960, the claimant was covered by a labor agreement, effective as of September 1, 1949, and entered into between the organization and the Gulf Coast Lines. The latter formerly was a subsidiary of the carrier but was merged into it in 1956. Notwithstanding this fact, separate labor agreements remained in force for the shop craft employes of the former subsidiary and the carrier until June 1, 1960. Effective as of said date, the labor agreement which had been in effect between the carrier and the organization was extended by mutual agreement also to cover the employes of the former subsidiary. However, this fact is immaterial to the disposition of the instant grievance because the pertinent provisions of the two labor agreements are identical and equally numbered. Thus, our construction thereof applies to both agreements.

2. In support of his claim, the claimant primarily relies on Rule 1, Section 2 (a) of the labor agreement which reads as follows:

> "**Subject to the exceptions contained in this agreement,** the carrier will establish a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, and with two consecutive days off

in each seven (7); the work weeks may be staggered in accordance with carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. **The foregoing work week rule is subject to the provisions of this agreement which follow:"** (emphasis ours).

A critical examination of Section 2(a) has satisfied us that it does not prescribe the establishment of a forty-hour week in all instances but contemplates that there are exceptions in the labor agreement. This is clearly demonstrated by the two clauses underlined above.

We are of the opinion that Rule 1, Section 2 (e) contains such an exception which is here determinative. This Section reads, as far as pertinent, as follows:

"All **possible** regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement; all regular relief assignments to be bulletined . . ." (emphasis ours).

A careful reading of Section 2 (e) has convinced us that it prescribes the establishment of regular relief assignments with five days of work per week only if such establishment is "possible" or, in other words, if sufficient work is available for a five-day work week. Conversely, the Section does not obligate the carrier to establish such a regular relief position if sufficient work is not available for five days per week. In such instances, the establishment of a five-day, regular relief position is not "possible" within the purview of Section 2 (e). Any other construction would require the Carrier to employ a regular relief employe five days per week even though on some days he would be idle.

In summary, we hold that Section 2 (e) releases the Carrier from establishing a regular relief assignment with five days of work if it is not possible to do so in the light of the operational needs.

Applying the above interpretation to this case, we have reached the following conclusions:

The record before us indisputably proves that there are only two days per week on which a relief coach cleaner is needed at Brownsville. Moreover, the Carrier's statement that it made an effort to find other necessary work for the Claimant so as to provide him with five days of work per week but was unable to do so stands uncontroverted. There is nothing in the record which would indicate that any necessary work has been available for the Claimant within his classification apart from that assigned to him on the two days per week in question. Accordingly, we are of the opinion that it has not been possible to establish a regular relief assignment with five days of work per week as requested by him. It follows that the Carrier is relieved from establishing such regular assignment.

3. The Claimant also charges the Carrier with a violation of Article IV of the National Agreement and Memorandum, dated August 21, 1954, which reads, as far as relevant, as follows:

"The Carrier shall have the right to use furloughed employes to

perform extra work, and relief work on regular positions during absence of regular occupants provided such employes have signified . . . their desire to be so used . . .

"Note 1: In the application of this rule to employes who are represented by the organizations affiliated with the Railway Employes Department, A. F of L., it shall not apply to extra work . . ."

The Claimant asserts that the permission granted the Carrier in Article IV does not apply to him because of the proviso contained in Note 1. We disagree. Note 1 clearly and unambiguously refers to extra work only. The term "extra" has been defined as connoting "more . . . than what is normal, expected, usual, necessary, etc.; additional." See: Webster's New World Dictionary, College Edition, 1962, p. 516. No such "extra" work is here involved. The work performed by the Claimant constitutes relief work on the days when the regular occupant of the position is absent because of his rest days. However, Note 1 does not refer to relief work. Thus, we fail to see any violation of Article IV on the part of the Carrier. On the contrary, Article IV supports the Carrier's action since the Claimant had the status of a furloughed employe after he was displaced by Perales. In addition, Article IV has not been applicable here after June 1, 1960, because the Carrier had rejected it in accordance with the option contained in the last paragraph thereof.

In brief, we hold that Article IV of the National Agreement and Memorandum, dated August 21, 1954, does not sustain the instant grievance.

4. Since we are of the opinion that the claim at hand is without merit for the reasons stated hereinbefore, it becomes unnecessary to rule on the Carrier's further arugments and we express no opinion on the validity therof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4261

Contrary to the findings of the majority there is no exception in the agreement permitting the carrier to use an employe only two days a week. Furthermore since the claimant was not performing work on a regular position during the absence of a regular occupant the carrier violated Article IV.

C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B. Zink