

Award No. 4861
Docket No. 4789
2-CMS tP&P-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carmen R. Deming, C. Wething, O. Johnson and O. McCalla were improperly changed from a work week of Tuesday through Saturday, rest days Sunday and Monday, to newly created assignments of work week Friday through Tuesday, rest days Wednesday and Thursday, effective at close of business, May 18, 1963 in violation of agreement rules.

2. That accordingly the Carrier be ordered to:

(a) Restore these men to their former assignments, work week of Tuesday through Saturday, rest days Sunday and Monday.

(b) Additionally compensate these men at the straight time rate of pay for having been deprived of their right to work each Wednesday and Thursday, retroactive to May 18, 1963 and continued until practice was discontinued.

EMPLOYEES' STATEMENT OF FACTS: Carmen R. Deming, C. Wething, O. Johnson and O. McCalla, hereinafter referred to as the claimants, were regularly employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., hereinafter referred to as the carrier. The claimants were employed and had a regular assignment, prior to May 18, 1963, of Tuesday through Saturday, with rest days of Sunday and Monday, starting time 7:30 A.M. to 4:00 P.M., on carrier's repair track at St. Paul, Minnesota.

On May 7, 1963, notice #11 was posted, abolishing twelve (12) carmen positions on the St. Paul repair track with rest days Sunday and Monday, effective with close of shift, Saturday, May 18, 1963 at 4:00 P.M. Also on notice #11 was a list of new positions, for which applications would be received, with various days of rest, which would be filled as of close of shift, Saturday, May 18, 1963.

not impose a penalty, unless expressly provided for in a collective bargaining contract, we now come to analyzing Petitioner's prayer for a monetary Award as set forth in Parts (2) and (3) of its Claim. These Parts set forth a formula for computing a monetary Award without regard to actual net losses, if any there be. The fulcrum is resolution of the issue as to whether such an Award would be a penalty. the claim of '33 hours each at punitive rate of the Station Accountant'.

In contract law a party claiming violation of a contract and seeking damages must prove: (1) the violation; and (2) the amount of the damages incurred. A finding of a violation does not of itself entitle an aggrieved party to monetary damages.

In the instant case Petitioner has proven the violation. It has not met its burden of proving monetary damages. There is no evidence in the record that any Employee in the MW collective bargaining unit suffered any loss of pay because of Carrier's violation of the contract. The inference from the record, if any can be drawn, is that the M.W. Employees were steadily employed by Carrier during the period of the project. Therefore, for this Board to make an Award as prayed for in Parts (2) and (3) of the Claim would be imposing a penalty on the Carrier and giving the MW Employees a windfall-neither of such results is provided for or contemplated by the terms of the contract. To make such an Award, we find, would be beyond the jurisdiction of this Board."

THIRD DIVISION AWARD NO. 11089

"However, no claim is made by or on behalf of such employee. The Claimants here were fully employed and compensated for their time. Furthermore, we can find nothing in the record to prove the basis for the claim of '33 hours each at punitive rate of the Station Accountant', There being nothing in the record to support the item (c) as stated in the claim, the board has no recourse but to deny this item."

THIRD DIVISION AWARD NO. 11135

"Part 2 of the claim falls for lack of evidence. It is apparent from the record that Claimant suffered no monetary loss."

The carrier submits that it is readily apparent that by the claim which they have presented the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the carrier's position that there is absolutely no basis for the instant claim as it is in no way supported by past practice, schedule rules or agreements and we respectfully request, therefore, that the claim 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 waived right of appearance at hearing thereon.

The Carmen Claimants were regularly employed by Carrier and had a regular assignment on a six day operation prior to May 18, 1963, of Tuesday through Saturday, with rest days of Sunday and Monday on Carrier's repair track at St. Paul, Minnesota. On May 7, 1963, notice was posted abolishing twelve (12) Carmen positions on the St. Paul repair track with rest days Sunday and Monday effective with the close of shift Saturday, May 18, 1963. On May 18, 1963, notice was posted assigning Claimants as Carmen to the repair track with rest days Wednesday and Thursday.

The only difference between the claim asserted in Award No. 4860 and this one is that Award No. 4860 claim was made for deprivation of the rights of the employes to work each Tuesday, whereas in this claim is made for deprivation of Claimants right to work each Wednesday and Thursday. Otherwise the facts and issues are identical.

The Findings in Award No. 4860 are made part of the Findings in the instant case by reference as that Award is controlling here.

AWARD

Claim 1 Sustained.

Claim 2 (a) Claim dismissed

Claim 2(b) Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1966.