Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7073
Docket No. 6881
2-BN-CM-'76

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

Parties to Dispute: (System Federation No. 7, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Burlington Northern Inc.

Dispute: Claim of Employes:

1. That the Burlington Northern, Inc. violated Rule 86 of the current agreement when they failed to call the regular assigned wrecking crew member for service on September 10, 1973.

2. That accordingly the Burlington Northern, Inc. be ordered to additionally compensate Carman W. R. Peek, North Kansas City, Missouri, for twenty (20) hours at the time and one-half rate on September 10, 1973.

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.

On September 10, 1973, Carrier called out the wrecker derrick outfit and the assigned wrecking crew for a wreck at Thiehoff, Missouri. Claimant was the regularly assigned cook to the wrecking crew but was not called, Carrier Wreckmaster being under the impression that Claimant was still on vacation. Instead, the relief cook was called and this, Petitioner contends, violated Rule 86 of the Agreement.

The wreck occurred on September 9, and the call for the wrecking crew went out at 12:30 a.m. on September 10. Carrier contends that in view of the change in Claimant's vacation period (granted with permission of Carrier), his vacation actually terminated as of the start of his "regular assignment at 11:30 p.m. on September 10", which was subsequent to the time when the call went out.

Petitioner contends that Claimant's vacation ended on September 7, that his rest days were September 8 and 9 and, therefore, he should have been called at 12:30 a.m. on September 10. Petitioner refers us to Rule 86, which in pertinent part states:

> "(b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit".

There is no dispute that Claimant was a member of the "regularly assigned crew" and that if he was not "on vacation" he should have been called. The narrow issue before us, therefore, is whether or not Claimant was "on vacation" when the call went out.

Although there is some dispute as to whether Carrier had knowledge of the change in vacation, the record shows that Carrier was in fact notified of the change in Claimant's vacation period. Hence, Carrier officials must be charged with such knowledge. However, this is not determinative of the issue before us.

The principals to this dispute are in agreement that a regular assignment extends for seven days, and that a vacation period includes both work days and rest days.

See, for example Award 5808 (Stark) and Third Division Award 18307 (Dugan).

Claimant's regular work assignment was Monday through Friday, 11:30 P.M. to 7:30 A.M., with Saturday and Sunday as his rest days. Hence, in view of the change in Claimant's vacation, it is Petitioner's contention that his vacation terminated at the end of the calendar day on Sunday, September 9, and that the call for the wrecking crew which went out at 12:30 a.m. on Monday, September 10, should have included him.

Carrier responds that Claimant's regular tour of duty started at 11:30 p.m. on September 10, based, not on calendar day computation, but on his assigned workweek. Consequently, that he was still "on vacation" when the call went out.

Two recent Awards, No. 2987 (4th Div. - O'Brien) and No. 20531 (3rd Div. - Lieberman), are particularly applicable to the issue before us in this dispute. In Award 2987, the Board stated:

> "It has been well settled by all Divisions of this Board that an employe's work day begins at the commencement of his assigned tour of duty and ends 24 hours subsequent thereto. See, for example, Second Division Award No. 1485 and No. 1673 and Fourth Division Award No. 737 and No. 2697. Furthermore, an employe's rest day must have a definition consistent with his work day." (Emphasis added).

This principle was reaffirmed in Award 20531, supra, wherein the Board held:

> "It is well established that the work day for any employe is the twenty four hour period beginning with his regular starting time." (Emphasis added).

Based on this well established principle, we conclude that each of Claimant's regularly assigned workdays was comprised of a 24 hour period commencing with his regular starting time of 11:30 p.m. Hence, that the seven day period here involved (the five day vacation period ending on September 7 and Claimant's two rest days on September 8 and 9) actually terminated at the end of his seventh "workday", 11:30 p.m. on September 10.

Accordingly, we find that Claimant was still "on vacation" as of 12:30 a.m. on September 10, the time when the call went out for the wrecking crew. Thus, the calling of the relief cook by Carrier did not violate Rule 86 of the Agreement.

We acknowledge that Award 4117 (Johnson) appears to indicate to the contrary, it being Petitioner's contention that the position taken by Carrier in that case is inconsistent with its position here.

In that case, however, a specific Memorandum of Agreement No. 33 was involved, which related solely to "overtime service". Moreover, there was no specific determination as to what constituted an employee's work day (that being the issue before us here), the Referee stating:

> "Burger was called out for regularly assigned wrecking service, not for overtime service, to which Memorandum Agreement No. 33 relates. It is therefore unnecessary to decide whether his work performed before 7:00 a.m. on Monday is to be considered as performed on Sunday, the second day after his vacation." (Emphasis added).

Additionally, the Petitioner Organization (Carmen) took the following position in its submission in Award 4117:

> "The findings of the Second Division in its Award 1485, reading in pertinent part:
>
> > 'While eight hours usually constitute a day's work, a twenty-four hour day when applied to collective agreements, unless specific exception is made, is the twenty four hour period immediately following the assigned starting time of his daily assignment.
>
> * * * * * * * *

'This being true, Claimant's standby day commenced at 8:00 A.M., Saturday, May 6, 1950 and ended at 8:00 A.M., on Sunday May 7, 1950.'

are persuasive to the employes' reasoning in the instant dispute."

Accordingly, we do not find Award 4117 controlling upon this dispute, nor in contravention of the principle that a workday must be computed, not on the basis of the calendar day, but on the basis of a full twenty-four hour period constituting the assigned workday.

In any event, the Awards subsequent to Award 4117, some of which are cited above, uniformly support the principle that, when applied to collective bargaining agreement, such as the controlling Agreement here, an employee's workday commences with the beginning of his assigned tour of duty and terminates twenty-four hours later. We adhere, therefore, to the principle set down in Awards 2987 and 20531, supra, and cases cited therein.

Accordingly, based on all of the foregoing reasons, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of June, 1976.