Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7443
SECOND DIVISION Docket No. 7208
2-MP-MA-'78

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the Note to Rule 5 of the controlling Agreement effective June 1, 1960 when they denied the employees at Kansas City, Missouri five (5) days' notice in which to prepare a holiday work list.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinists S. L. Piburn, A. W. Bird, R. A. Raines, S. L. Edwards, G. C. Torkelson, J. W. Woods, J. B. Lykins, S. H. Law, R. L. Clark, R. D. Huffman, A. Waterman, W. H. Asbill, R. E. Green, J. Biesley and D. A. Howell and Machinist Helpers S. G. Arney, R. J. Ealy and A. E. Russell eight (8) hours each at the pro rata rate of pay for three (3) days.

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.

This is a dispute concerning the proper application of the "Note" to Rule 5 of the agreement between the parties, which reads as follows:

> "NOTE: Notice will be posted five (5) days preceding a holiday listing the names of employes assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. Local Committee will be advised of the number of men required and will furnish names of the men to be assigned but in the event of failure to furnish sufficient employes to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

On December 17, 1974, Claimants were notified by Bulletin No. 118 that they would work on Christmas Day. We note that in actuality, this constituted an eight (8) day advance notice. However, a few days later, Carrier says that it had received additional information from other railroads operating in the area about their holiday operating plans and, as a result, it was necessary for Carrier to reduce the actual number of employes working on the holiday. Therefore, on December 21, 1974, the Local Chairman was advised by the Carrier to prepare a new reduced list of employes who would work Christmas Day. This new list was posted on December 23, 1974, by Bulletin No. 120, which served to cancel or amend Bulletin No. 118, supra. Of significance is the fact that all of the Claimants herein included as part of the reduced work force in the supplemental Bulletin No. 120 had also been scheduled to work on Bulletin No. 118. The noticeable difference between the two bulletins is that some of the employes originally scheduled to work in Bulletin No. 118 were deleted from that list in Bulletin No. 120.

Under the circumstances herein, and considering the manner in which the claim is drafted and presented to this Board, we fail to see how the Claimants presented by the Petitioner (who actually received more than a five (5) day notice) have any cause of action arising from an alleged breach of the "Note" to Rule 5 of the agreement. We think that if any employes would have legitimate cause to complain, it would be those employes who were originally scheduled to work on the holiday and, as a result of Carrier's belated change in estimati its required work force, were not notified until December 23, 1974 that they would not work the holiday. However, those employes are not the Claimants herein, and on the state of the record as it has been progressed to us, we find no violation of the agreement with respect to those employes named as Claimants.

In reviewing the "NOTE" to Rule 5, we conclude that it imposes mutual responsibilities upon both local management and local union representatives to have a notice posted five (5) days preceding a holiday listing the names of employes assigned to work on the holiday. Local Management must make a good faith and objective determination of its actual required work force on the holiday and provide that information to the Local Committee in time so that it may furnish the names of employes who will work and that the list may then be posted within the five (5) day period. While we recognize that it may be difficult for Carrier to make an adequate determination of actual service requirements for holiday work until shortly before the holiday, the "NOTE" to Rule 5 was negotiated in good faith between the parties and, of course, must be complied with. We think that a spirit of cooperation between the parties at the local level will make operation of the procedures required under the "NOTE" to Rule 5 go smoothly and obviate any future disputes.

A W A R D

Claim dismissed.

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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 24th day of January, 1978.