

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when 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 the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 8(b) and 30, when Carman Haag was permitted to work as a carman on the rest days of the foreman position he was temporarily filling, September 25-26, 1975, North Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carmen C. F. Gubanski and F. J. Felton in the amount of eight (8) hours each at the punitive rate as they were first out on the rip track overtime board and available to work on September 25-26, 1975.

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.

A temporary vacancy existed on a Car Foreman's position at North Little Rock during the period of September 16 through the 27th, 1975, while the regular incumbent was working a vacation vacancy. To fill this resulting vacancy, Carrier assigned Carman Haag, who had a regular assignment on the North Little Rock Repair Track with rest days of Tuesday and Wednesday. The foreman's vacancy he was filling had rest days of Thursday and Friday, and, on those rest days, Carrier permitted Mr. Haag to return to his Carman's assignment and work. This action is in dispute; the Employees contending that under the existing rules, Carman Haag, while filling the Foreman's vacancy, assumed all the hours and conditions of that assignment which would thus preclude Mr. Haag from working his Carman's assignment on his Foreman rest days. On the other hand, Carrier contends that a special

memorandum of agreement dated April 30, 1954 provides that only in cases where Foremen are absent on vacation are employees in the status of Mr. Haag precluded from working the rest days of their temporarily vacated Carman's assignment.

We examine this dispute in light of the existing provisions of the agreement between the parties and our previous decisions. Firstly, the Employees cite Rule 30 of the agreement between the parties, which provides:

"RULE 30 - TEMPORARILY FILLING FOREMANSHIP.

Should an employe be assigned temporarily to fill the place of a foreman he will receive the established rate of the position and be governed by working conditions and rules of such position." (Emphasis added)

Carrier's position is, as we noted, based on the provisions of a special memorandum of agreement dated April 30, 1954 which has specific application "When Employees represented by the Organizations parties hereto are selected to relieve Foreman while the latter are ABSENT ON VACATION..."

In reaching a decision on this case, we firstly comment that we do not think that the narrow application given by Carrier to the April 30, 1954 memorandum of agreement is correct. The vacancy here in dispute resulted because an employe represented by one of the Organizations parties hereto was selected to relieve a Foreman while the latter was absent on vacation.

Secondly, and more importantly, we considered the meaning and intent of Rule 30, supra, as applied to the facts and circumstances of this case. In our decision in Second Division Award 4677 (and followed in Award 5808), we held:

"In many prior awards of this and other divisions (Second Division Awards 1804, 2505, and 2842 and Third Division Awards 5811, 6408 and 6976) the principle has been soundly established that when a regularly assigned employe is transferred to a temporary or relief vacancy, he assumes all the conditions of that position including the hours assigned, rate of pay and rest days. Accordingly, we must deny this claim."

We think this principle is directly on point with the facts of this case and the application of Rule 30. Accordingly, it is our conclusion that Carrier erred when it permitted Mr. Haag to work his temporarily vacated Carman's assignment on the rest days of his Car Foreman's assignment.

Accordingly, we will sustain the claim, but, only at the pro rata rate in light of many of our previous decisions which have held that the proper measure of damages is the pro rata rate when no work is performed.

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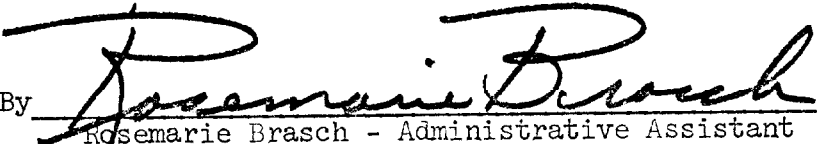
Award No. 7507
Docket No. 7408
2-MP-CM-'78

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.