

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

(Sheet Metal Workers International Association  
Parties to Dispute: (  
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

That one vacation relief position for employes of the Sheet Metal Workers Craft at the San Jose Roundhouse, be established at this time as provided by the Vacation Agreement signed December 17, 1941 effective January 1, 1942.

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 employes 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 February 25, 1983, the Organization filed the above-captioned Claim with the Carrier. It premised the Claim upon Section 6 of the Vacation Agreement of December 17, 1941, effective January 1, 1942, and Rule 1(f) of the general contract. Section 6 of the Vacation Agreement provides as follows:

"The Carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the Carrier shall not be required to provide such relief worker."

Rule 1(f) states as follows:

"Regular Relief Assignments. 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 individual agreements.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employes of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving. Relief employes will take the rate of the regular employe they are assigned to relieve."

The mechanical work force employed at the point in question consisted of members from four crafts, with one Sheet Metal Worker scheduled on each of the three daily shifts Monday through Friday, except for the third shift on Friday. No Sheet Metal Workers were employed on weekends. The Organization argues that there is no vacation relief position for members of the Sheet Metal Workers at the San Jose Roundhouse. As a result, the Organization claims that when a Sheet Metal Worker is on vacation there will be no employee of the Sheet Metal Craft on duty to perform the work of the craft.

The Organization states the Claim must be allowed as presented because the Carrier failed to timely deny the Claim in accordance with Rule 38 of the General Agreement. Rule 38 provides, in pertinent part:

" . . . Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative), in writing, of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented . . . ."

The Carrier attacks the Claim on three grounds. First, Carrier contends that the Claim as presented requests relief beyond the remedial authority of this Board. Second, the Carrier maintains that the dispute is only hypothetical in nature and that the Organization has failed to meet its burden of proof that a vacation relief assignment needed to be established at the San Jose Roundhouse. Third, the Carrier states that the issue presented by the Claim is duplicative of an issue already decided by this Board in Carrier's favor.

The Board finds Carrier's position that only one Claim was made by the Organization is not well founded based upon review of the entire record. The first Claim dated November 11, 1982, which was addressed in Second Division Award No. 10708, requested "that one Sheet Metal Workers Regular Relief position be established at the San Jose Roundhouse at this time as provided by the current Agreement." (Emphasis supplied). The instant Claim filed almost 3-1/2 months later asked, "that one vacation relief position for employees of the Sheet Metal Workers Craft at the San Jose Roundhouse be established at this time as provided by the Vacation Agreement signed on December 17, 1941 effective January 1, 1942". (Emphasis supplied).

It is almost beyond the limits of credibility that the Carrier should even attempt to convince this Board that these two Claims, distinct and separate on their face, are nevertheless identical, and therefore, Carrier's response to the first Claim should suffice for the second. While the Board does find that the Carrier denied this Claim in correspondence with the General Chairman dated April 15, 1983, Carrier's response directed primarily at the earlier Claim barely reaches the minimal level of communication necessary to constitute a disallowance of the Claim presently under review. Carrier's response to the instant Claim is obfuscated by its unilateral merger in the handling on the property of the instant Claim with the Organization's Claim filed months earlier. Despite our finding of disallowance in this case, similar treatment of duly presented and separate claims by the Carrier in the future, a method of handling which serves only to defeat the purpose of the Claim process itself, will not be tolerated.

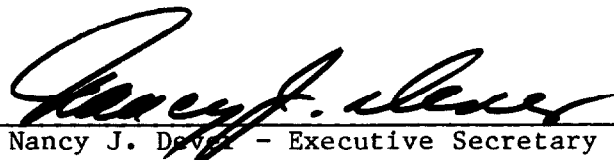
Turning to the merits, the Board finds Rule 1(f) expressly addresses regular relief assignments, not the assignment of vacation relief workers. Similar to Award No. 10708, the Organization here has failed to meet its burden of proof that a vacation relief worker is needed, and that Carrier's failure to provide such a position burdens those employees remaining on the job, or burdens the vacationing Sheet Metal Worker upon his return to work. There is simply no evidence that any of the predicate conditions under the National Vacation Agreement calling for provision of a Vacation Relief Worker have been met. Due to these findings, it is unnecessary for the Board to consider the Carrier's contention as to the propriety of the relief sought.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1986.