

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 5 of the controlling agreement when they worked a Carman from the third (3rd) shift on the first (1st) shift assignment of Carman A. E. Sundry which was blanked on the May 30, 1983 holiday.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman A. E. Sundry in the amount of eight (8) hours at the punitive rate.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Organization filed a Claim on July 8, 1983, alleging that Carrier's actions on the holiday of May 30, 1983, were improper and violative of the Agreement. In the facts of this case the Carrier had blanked Carmen's position on the holiday, and the Claimant, who was regularly assigned to work that day, was off with pay. On the third shift (11:00 P.M. to 7:00 A.M.) of May 29, 1983, the Carrier held over the assigned Carman to work a late arriving train. That Carman worked over two hours into the holiday. It is the Organization's position that under Rule 5 of the Agreement, Claimant, who was the regular first shift incumbent, was denied his right to work. Rule 5 states in pertinent part:

"Rule 5. RELIEF WORK, REST DAYS AND HOLIDAYS

(a) Employees assigned to rest day relief positions and/or holiday work, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request.

NOTE: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."

As such, the Organization maintains that only the Claimant had the right to work on the holiday to protect his regular assignment.

In its response on property the Carrier noted that it had followed common practice in holding over the third shift Carman until he had completed his work. In this case, a train arrived later than expected and, as such, the Carman working on May 29 was held over to complete his work for two and one half hours into the May 30 holiday. It is the Carrier's position that since no employee was called to work on the holiday, there was no violation of Rule 5 of the Controlling Agreement.

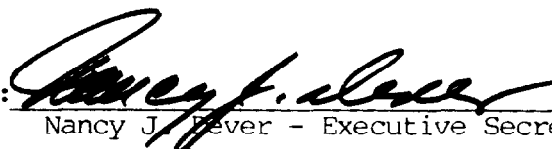
This Board notes that under clearly similar factual circumstances between the same parties considering the same Agreement provision, a similar Claim has been denied (Second Division Award 10737). We have reviewed and concur with the reasoning of Second Division Award No. 10737. Having found that the issue has been previously decided, we deny the instant Claim on the basis of stare decisis.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December 1986.