

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

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company violated Rule 3, Paragraph B and Rule 12 of the controlling Agreement when Master Mechanic Grimaila instructed Carman R. R. Hutchinson to change rest days from Tuesday and Wednesday to Saturday and Sunday.
2. That the Missouri Pacific Railroad Company violated Rule 3, Paragraph B and Rule 12 of the controlling Agreement when they failed to bulletin new job given Carman R. R. Hutchinson and failed to bulletin new job with Saturday and Sunday off in line with Rule 12 of the controlling Agreement and failed to pay claim in the amount of claim explained in Exhibit A.
3. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman R. R. Hutchinson in the amount of eight (8) hours pay at straight time rate for June 8 and 9, 1985 which were assigned work days of his regular position and time and one-half rate for June 11 and 12, 1985 which were the regular rest days of his assigned position. This is a continuous claim for eight (8) hours pay at straight time rate for each Saturday and Sunday and time and one-half rate for each Tuesday and Wednesday until the violation is corrected.

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.

In the instant case the facts are not in dispute that Claimant had been injured on the job, June 7, 1985. Subsequent to the injury, Claimant was unable to perform his regular Carman's duties. Claimant's regular position had rest days of Tuesday and Wednesday. The Master Mechanic and Claimant discussed the restricted activity program and arranged alternative work. The new work involved computer procedures inputting AAR billing but with rest days of Saturday and Sunday.

The Organization charges that the Carrier violated Rules 12 and 3(b) in that it created a new position which it did not bulletin, and failed to pay overtime to Claimant for working on his rest days of Tuesdays and Wednesdays. The Organization notes that it was not a party to the decision reached between the Claimant and Master Mechanic after the injury. It argues that neither had the authority to alter the Agreement.

It is the position of the Carrier that no Rule was violated. Since the Claimant's schedule was changed, wherein Saturday and Sunday were rest days, Claimant did not work overtime on his rest days. Even further, Claimant was agreeable to the change as the alternative schedule was not mandated or required. As no new vacancy was created, and the change was only for two days and lasted less than fifteen days, Rule 12 was inapplicable. Carrier also notes that its action permitted the Claimant to attend therapy and his doctor on the weekend and in no manner either restricted the seniority of other Carman, nor led to any lost wages for any employee, including the Claimant.

Our review of the case at bar indicates that the Carrier created a new position. Under the Agreement such had to be bulletined unless specific conditions were met. They were not met in the instant circumstances.

The only position Claimant had was his regular position having neither bid for nor been awarded the position he held in the restricted activity program. Nowhere on property does Carrier raise Rule 17 (Faithful Service) which is therefore not before this Board for consideration. What stands before this Board is evidence of record that Claimant worked the rest days of his regular position and failed to work his normally assigned Saturdays and Sundays.

Carrier argues that Claimant agreed to such a decision and was therefore working such days of his own volition. This is not rebutted. Rule 3(b) on overtime refers to "employees required to perform work on their rest days." The full meaning of the Rule cannot be construed to suggest that Claimant's employment by Carrier on his off days would not constitute overtime. In this industry agreements revolve around positions and seniority, not work and employees. Claimant was not empowered to alter the Agreement and was not exempted from its rules. The rules apply to positions which are advertised, bid and awarded. The overtime accrues to an employee of a position. The only position Claimant had was his regular assignment. Claimant failed to work his designated days. This Board must enforce the Agreement language and as such, the Carrier has violated the Agreement. Claim of the Organization that Carrier violated the Agreement is sustained.


As for the compensatory part of this claim, the Board's complete review of the record finds circumstances which are unique and require denial. There is no evidence of record that Carrier's action represents either an ongoing pattern or an attempt to flout the Agreement. The record indicates in the instant circumstance that the Carrier acted in good faith. Although not an estoppel to damages, the Organization does not rebut the Carrier's argument that no employee suffered lost wages and that no employee's seniority was negatively affected. There is no record of evidence that the Claimant or any other employee suffered any employment disadvantages because of Carrier violation. Under the particular and unique circumstances of this single instance, the monetary part of the claim is denied (Second Division Award 7289).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of February 1988.