

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12561
Docket No. 12479
93-2-91-2-296

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

- "1. Carman Leslie Leytham, Council Bluffs, Iowa, was deprived of work and wages to which he was entitled when the Chicago & North Western Transportation Company violated the controlling Agreement Rules 2, 14, 16 and 21, when his position, Job 035, was abolished and rest days changed from Sunday and Monday to Tuesday and Wednesday.
2. Accordingly, Carman Leslie Leytham be compensated \$2.50 per day from April 24, 1990 to the date of his return to Position 035; and the rest days of Sunday and Monday are re-established for Position 035. This is a continuous claim as provided under Rule 29 of the July 1, 1984 Agreement.
3. The Chicago & North Western violated Rule 29 (time limits) when Manager D. Miller failed to reply to original claim within the sixty day time limit."

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 employee 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.

Carrier's Council Bluffs, Iowa car repair facility is a 24-hour per day, 7-day per week operation. On April 24, 1990, Carrier issued a bulletin abolishing Job 035, the position held by Claimant. That position had Sunday and Monday rest days. Claimant exercised his seniority and displaced on a position with Friday and Saturday rest days. A new position was bulletined with Tuesday and Wednesday rest days. On May 18, 1990, the instant Claim was filed on behalf of the former occupant of the abolished position contending that Rules 2, 14, 16 and 21 of the Agreement were violated when the rest days of his former position (Job 035) were changed from Sunday and Monday to Tuesday and Wednesday. The Claim sought \$2.50 per day additional compensation and a change in the rest days back to Sunday and Monday.

The Organization's May 18, 1990, Claim was denied on May 31, 1990, although the Organization contends that it never received the denial and in addition to pursuing the matter on its merits before this Board, also argues that the Claim is payable as presented because of the time limit violation.

The evidence in this record does not support a showing that the Claim was not timely denied at the first level. Accordingly, the request of the Organization that it is payable as presented is rejected.

With regard to the merits of the matter, it is not disputed that the operation at Council Bluffs is a seven day operation. Rule 2 of the Agreement, which is taken from the 1949 National Forty Hour Week Agreement, provides that positions that are worked seven days per week may have any two consecutive days as rest days, with the presumption in favor of Saturday and Sunday. Carrier indicated that operational requirements were present so that the efficiency would be improved with some Carmen having Friday and Saturday as rest days, others with Sunday and Monday rest days, and the Carmen on Job 035 with Tuesday and Wednesday rest days. In the circumstances present this would not be in violation of the Forty Hour Week Agreement or Rule 2. The claim is without merit. It is denied.

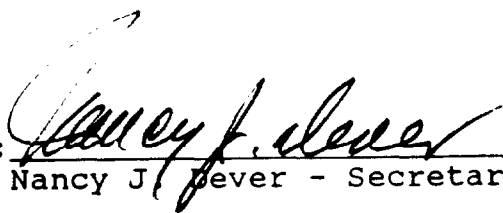
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 11th day of August 1993.