Award No. 6586

Docket No. MW-6667

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective agreement when it required Fuel Laborer E. Montoya to suspend work during his regular assigned work period of September 1, 1952;

(2) Fuel Laborer E. Montoya be reimbursed for the wage loss suffered account of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains and operates a coal chute at Trinidad, Colorado, at which point a position of fuel laborer has been established which has and is considered as necessary to be filled seven days of each week. This position is necessary to the continuous operation of the Carrier, with relief regularly furnished on the assigned rest days.

The Claimant was regularly assigned to the position shown as No. 40 and previously filled by A. Williams and with assignment as shown on Notice No. 61 which reads as follows:

"Trinidad, Colo., August 24, 1949

Notice No. 61

To Shop Laborers.

Effective September 1, 1949, the following assignments will be worked. Each job has been numbered and will carry this number so long as job is continued.

of the named holidays will not be regarded as reducing the regularly established working days. Therefore, the Carrier was within its rights in cancelling the Fuel Laborer's job on September 1st, Labor Day.

The Fuel Laborer's position was not filled by anyone on September 1st as there was ample coal from the coal chute to last until September 2nd.

It has been a long-established practice for the Mechanical Department to post a notice at the various shops and terminals, notifying mechanics and shop laborers of the positions that will be worked on the recognized holidays, similar to the notice of August 27th, and it has been understood that all other positions that were not listed would not be worked on the holiday.

This is the first claim that has been filed when a position was blanked on a holiday, under the provisions of Rule 22 quoted above.

The Employes, in handling the case on the property, have contended that inasmuch as the Fuel Laborer's job was bulletined as a seven day assigned position, it could not be blanked on any holiday. There is no rule in the Agreement that will support such contention. The bulletining of the position is not a guarantee that the position will be worked—it only guarantees that if the position is worked, the employe assigned to the position will work (see First Division Board Awards 4345, 6399, 11610, 11711, 11811, 11687, 12065, 12332, 12908, 12909, 12910).

Rule 22, previously quoted, provides that regularly established working days will not be reduced below five days per week, except that the observance of the named holidays will not be regarded as reducing the regular working days below five days per week. Therefore, the Carrier did not violate any of the provisions of the Agreement when it observed the named holiday and laid off the Fuel Laborer's position on that day.

As there was no violation of any of the provisions of the Agreement, this claim must be denied.

OPINION OF BOARD: When it gets right down to pin-pointing the issue in this case, the Employes rely on certain language in Award No. 5589, viz., "The foregoing indicates that it is implicit in the Forty-Hour Week Agreement that the Carrier of its own motion may not blank established six and seven-day positions of the nature here involved when the regularly assigned occupant and the relief report for duty."

The Employes in that dispute relied on the same award in their submission in Docket CL-6336, Award 6385, where their claim was denied.

We are all prone to quote only those portions of authorities that are favorable to our position, but it is particularly important to read all of the paragraph which the Employes quote from in Award 5589 wherein it appears that "repeated blankings of such positions might afford a basis for a claim of violation of the Agreement on the ground that such conduct is evidentiary of the fact that the positions are not in reality six or seven-day positions but in fact five and six-day positions." (It was at this point that Employes began their quote in the first paragraph above.)

It is significant to note also that in Award 5589 it was the "Position of Employes * * * that the Carrier cannot properly blank regularly established six or seven-day positions for one or more days when the regular assignee to a six or seven-day position is absent account sickness or other causes." It also appears that the holiday rule, such as Rule 22 (b) in the current Agreement was not involved in that case.

In any event, Award 5589 is not the latest expression of the Board on this matter. In Award 6385, supra, the claim was for denial of work on certain holidays, and as already noted, we denied the claim.

While it is true that in Award 6385 the Agreement allowed the Carrier "the right to reduce the days below five (5) per week in a week in which specified holidays occur within the days constituting the work week by the number of such holidays," in our case the rule (Rule 22-b) provides, (b) The observance of New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas **will not be regarded as reducing** the regularly established working hours or days.

If there is any difference in the intent of the language used we cannot see it.

The alleged violation in this case involved one man and one holiday. There is no suggestion of repetitious blanking such as was referred to in Award 5589, assuming that could vitiate a positive rule as we have in our case, a question we are not called upon to determine.

Complaint is made that the employe was not given proper notice of the change of time of his assignment when he was called to help service trains 1 and 8. In view of his failure or refusal to respond to the call we deem it unnecessary to pass on the question, assuming it to be relevant, in view of our disposition of the main issue in the case.

Our conclusion is that the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 27th day of April, 1954.