NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21782
THIRD DIVISION Docket Number CL-20758

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7562, that:

1. Carrier violated the Agreement between the parties when it assigned the five-day position of Abstract Clerk No. 9, awarded to Ms. D. Currie, at Bend, Oregon, a work week of Tuesday through Saturday instead of Monday through Friday, as required by the Agreement.

2. The Carrier shall be required to compensate Ms. D. Currie and/or her successors, eight (8) hours at the time and one-half rate commencing Saturday, February 3, 1973 and each Saturday thereafter, and eight (8) hours at the straight time rate for Monday, February 5, 1973 and each Monday thereafter until the violation is corrected.

OPINION OF BOARD: This case had its genesis in verbal instructions from Carrier's Agent at Bend, Oregon to Abstract Clerk D. Currie on October 2, 1972 changing the latter's workweek from Monday-Friday to Tuesday-Saturday, with Sundays and Mondays as rest days. Prior to that time, Claimant had worked Monday-Friday with frequent Saturday overtime to take care of billings in her position of Abstract Clerk No. 9 at Bend, Oregon. Claimant worked the new schedule from October 1, 1972 although Carrier did not bulletin the change until February 1973. On March 31, 1973 the Organization filed the instant claim on behalf of Ms. Currie alleging that the change to Tuesday through Saturday assignment was in violation of the Agreement, and seeking damages from February 3, 1973 of eight hours at the pro rata rate for each Monday and eight hours at the time and one-half rate for each Saturday, until such time as her schedule was returned to Monday-Friday.

A threshold question joined on the property and preserved throughout handling of this claim concerns timeliness and arbitrability under Appendix C of the controlling Agreement. Carrier avers that the claim filed March 31, 1973 was fatally time-barred since more than 60 days had elapsed from the date of the change of schedule on October 1, 1972. The Organization counters that this is a "continuing violation" since the allegedly improper scheduling has occurred repeatedly week-in and week-out

since October 1, 1972 and each such occurrence constitutes a direct violation. Arguendo, the Organization maintains that the position never was bulletined until February 3, 1973 and the claim filed March 31, 1973 accordingly, is well within the 60-day limit. We have considered carefully the raft of awards, many contradictory, filed by the parties on the subject of continuing violations. In our judgement the Organization's position is persuasive that the instant case falls within that class of continuing violations to which Rule 3 of Appendix C speaks. It is axiomatic, however, that the monetary claim thereunder cannot be retroactive more than 60 days.

Prevailing upon the threshold question is cold comfort to the Organization, however, when we turn to the merits of the case. This dispute, like several others of recent vintage before our Board and other arbitration tribunals under the Act, concerns the application of Rule 29 of the controlling Agreement. Specifically, we are faced herein with the question whether Carrier violates Rule 29 by staggering the five-day workweeks of two employes so as to provide six-day coverage of a position for which service is required consistently six days each week. (With particular reference to the introductory Note of Rule 29, the record in this case leaves no doubt that we are dealing with a six-day position per Rule 29 C and not a five-day position per Rule 29 B. It follows, therefore that Rule 29 F has no application herein.) Our recent decision in Award 21428 governs this case and compels a denial of the claim. That Award was paraphrased and adopted by Special Board of Adjustment under Appendix K of the Agreement in Award No. 23. Upon renewed consideration of all the substantive arguments proferred by the parties in this case, we are unable to conclude that Award 21428 is palpably erroneous and we shall not reject its teachings herein. This claim likewise must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1977.