Award No. 14508
Docket No. SG-13286

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 66, when it failed and/or refused to transfer Mr. R. E. Floress to the special Signal Maintainer position to which he was assigned by Signal Bulletin No. 164-60 dated September 23, 1960, within fifteen days after the close of the bulletin.

(b) The Carrier now be required to compensate Mr. Floress for eight hours' pay at the pro rata rate of the position to which assigned for each work day of that position, Mondays through Fridays, from October 10, 1960, until December 2, 1960, inclusive.

(c) The Carrier also be required to compensate Mr. Floress for eight hours' holiday pay for Thanksgiving Day, November 24, 1960, which he did not receive but would have, had he been properly transferred.

(d) The Carrier also be required to compensate Mr. Floress the difference between the amount received and the overtime rate of pay of the position to which assigned by Signal Bulletin No. 164-60, for every Saturday and Sunday that he was worked from October 8 until December 4, 1960, inclusive.

EMPLOYES STATEMENT OF FACTS: Prior to the time this dispute arose, Mr. R. E. Floress, the Claimant in this dispute, was working as a Relief Signal Maintainer, with Wednesdays and Thursdays as rest days.

On Signal Bulletin No. 161-60 (Brotherhood's Exhibit No. 1) dated September 12, 1960, the Carrier advertised a special Signal Maintainer position, with Saturdays and Sundays as regular rest days. Mr. Floress was assigned to that position by Signal Bulletin No. 164-60 (Brotherhood's Exhibit No. 2) dated September 23, 1960.

Under date of November 30, 1960, the Carrier instructed Mr. Floress in

ant Floress to the Special Signal Maintainer position until December 5, 1960, however, he was allowed the higher rate of the Special Signal Maintainer position commencing October 3, 1960 and, therefore, lost no earnings during the period of the instant claim, i.e., October 8 through December 4, 1960.

There is attached hereto as Carrier's Exhibit "C" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. D. E. Twitchell, General Chairman, under date of May 15, 1961.

OPINION OF BOARD: On September 23, 1960, Carrier assigned Claimant R. E. Floress to the Special Signal Maintainer's position advertised in Signal Bulletin No. 164-60. Operational requirements prevented the Carrier from transferring Claimant Floress to the new position until December 5, 1960, but he was paid the position's higher rate commencing October 3, 1960.

The Organization filed the instant claim seeking eight hours' pay at the pro rata rate of the position to which assigned for the period prior to December 5, 1960, eight hours holiday pay for Thanksgiving Day, and the difference between the amount received and the overtime rate of pay for the position to which assigned for every Saturday and Sunday worked between October 8 and December 4, 1960. The Organization contends that this liability results from the Carrier's failure to transfer the Claimant in timely fashion as required by the Agreement.

The Carrier asserts that by paying the Claimant at the rate for the new position for the time in question, it met fully its obligations under the Agreement, and that since the Claimant enjoyed the res t days of the former position it should not be required to bear the additional costs of paying him for working on one set of rest days when he enjoyed another set of rest days during the period in question. In handling this case on the property Carrier acknowledged that it had not completed the transfer of Claimant Floress within the fifteen days required by the Agreement. It did pay him at the higher rate of his new position during the period up to the time of his transfer but did not accede to the lost earnings claim presented on his behalf for Thanksgiving Day and for his new rest days.

This same basic claim was raised on the same property, by the same parties in a recent case decided by Referee Hall in Award No. 13376. As stated in that Award:

> "There is nothing in the record indicating the Claimant has in any respect sustained any loss of earnings nor that Claimant has in any way been damaged."

We find that award controlling in this case. Although we retain the authority to reverse prior awards of this Board. We find no justification for doing so in this case. Our reasoning is the same as that expressed by Refree Dorsey in Award No. 11788:

> "We have no hesitation or compunction in reversing prior Awards when we are convinced they are palpably wrong. But, we cannot and do not lightly regard precedent Awards; for, if we did so, it would not engender the prompt and orderly settlement of disputes on the property within the contemplation of Section 2 (4) and (5) of The Railway Labor Act, herein called the Act * * * Only if in law and in fact a prior Award finds no support should we reverse it. Certainly, where

a provision of an Agreement permits more than one interpretation, we must presume that the Division, in its deliberations, considered all of them before making its selective determination. We should not at a later date, with a different referee participating, substitute our judgment for that in a precedent Award unless we are unequivocally convinced and can find that the prior judgment is without support. To apply any other test would be to foster uncertainty in the Employe-Carrier relationships in derogation of the objectives of the Act."

The Organization in the instant case contends that because of the delay in making the assignment, Claimant lost out on Thanksgiving Day pay, and worked Saturdays and Sundays (his new rest days). This view overlooks the fact that Carrier did compensate him as though the holiday had fallen during his regular workweek, and to follow the Organization's logic would have recognized four rather than two rest days per week.

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 Carrier did violate the Agreement.

AWARD

Claim (a) sustained;

Claims (b) (c) and (d) denied, in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1966.

DISSENT TO AWARD 14508, DOCKET SG-13286

The Majority, consisting of the Carrier Members and the Referee, correctly found that Respondent violated the Agreement in not transferring Claimant to his new assignment within the period specified in the Agreement.

The Majority committed serious error, however, in seeking out ways and means of excusing the violation to the hurt of Claimant.

In finding that Claimant suffered no loss the Majority seems obsessed with the idea that so long as he received the higher rate he was not hurt. This reasoning completely overlooks the fact that an employe bidding on a position has a contractual right to expect that if he is the successful applicant he will not later than 15 days after close of the bulletin enjoy the conditions attached to the new assignment not because of any moral or equitable consideration but because the agreement unequivocally so provides.

The principle that an employe is entitled to enjoy the benefits of the conditions attached to the job he acquires through exercise of seniority is clearly recognized and applied in Award 3403 singularly cited and relied upon by Respondent but clearly ignored by the Majority insofar as it benefits Claimant.

Claimant as a result of Respondent's arbitrary action worked eighteen of his regularly assigned rest days for which he was entitled to overtime pay. The fact that he was forced to observe other days as his rest days neither satisfies the rules nor excuses Respondent's violative action.

As a result of being forced to remain on the old assignment with Thursdays and Fridays as rest days, Claimant was deprived of holiday pay for Thanksgiving Day as enjoyed by other employes regularly assigned, as Claimant was, to a Monday through Friday work week. Therefore, the Majority's assertion that "Carrier did compensate him as though the holiday had fallen during his regular workweek" is a misstatement.

Award 13376 relied upon by the Majority, charitably speaking, leaves much to be desired in the way of logic and furtherance of the obvious intent of Congress when it admonished the railroads and the employes "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions." The author of Award 13376 stated the case very well when he said in Award 11908—" * * * An Award is no stronger than the reasoning and authority behind it. * * * "

I find no fault with the gems of wisdom taken by the Majority from Award 11788 if an when constructively applied. However, in this particular instance borrowing from the Dissent to Award 11788 filed by the Carrier Members—

> " * * * Error compunded, no matter how many times, does not become right."

The Majority says that operational requirements prevented the Carrier from transferring Claimant to the new assignment within the time required by the agreement. A more fitting statement would have been that through a lack of foresight and planning on the part of Respondent it had no one to put on the job Claimant was due to leave. Such deficiency was not provided for by the parties and the Majority exceeded its authority in supplying a way out for Respondent.

For the foregoing reasons, I dissent.

G. Orndorff
Labor Member

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