NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23198
Docket Number MW-2313

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it failed to call Laborer L. J. Porco for overtime work on Saturday, August 12, 1978 but called and used a junior laborer therefor (System File D-48-78/MW-4-79).

(2) Laborer L. J. Porco be allowed nine (9) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Claimant L. J. Porco with seniority as a laborer, effective March 8, 1976, was regularly assigned to the Salida East Section with a Monday through Friday assigned work week. His rest days were Saturday and Sunday. Pursuant to Agreement entitlements, he began his scheduled vacation on Monday, July 31, 1978 and said vacation lasted until Friday, August 11, 1978. His normal Saturday and Sunday rest days followed thereafter.

On August 12, 1978 Carrier needed a laborer to unload cross ties from a work train and called D. S. Porco, a less senior employe to perform this task. Claimant contends that he was available and willing to perform this assignment, consistent with his superior seniority status and Carrier violated the Agreement, particularly Rule 6(a) (Seniority) when it assigned this work to another employe. He avers that since his vacation ended at the close of his regular work week on Friday, August 11, 1978 he was entitled to be called to perform this work on his normal rest day on an overtime basis.

Carrier argues that his claim lacks Agreement justification and further that Claimant was transferred to the Cotopaxi section prior to the claimed date of August 12, 1978.

In reviewing this case, the pivotal question before this Board is whether the Seniority Rule supports Claimant's position. Admittedly, while Third Division Award 6599, cited by Claimant, is somewhat persuasive on this point, we find that Third Division Awards 18295 and 10869, which are later awards, more directly focus on the adjudicative issue. In Third Division Award 18295, involving an analogous fact situation, we held in pertinent part that:

> "It is incumbent on the Organization to show this Board that there is Agreement requirement for the procedure it contends to be correct. (Award 10869) We do not find that this has been accomplished. Further, we do not hold that the rest days following the five work days are Claimant's. There are Awards (18085, 5808, SP Board 603 Award No. 31), which allow the assignment of work as the Carrier did in this instance."

We find this decision controlling herein. Moreover, it is strongly buttressed by Third Division Award 10869, wherein we stated that:

> "We are inclined to accept the position of the Carrier regarding the tradition and practice in this matter in view of the fact that nowhere in the submission does the Organization directly refute the statement by the Carrier made at several different times, except indirectly by pointing to Award 6599. Award 6599 is not in our opinion indicative of common practice and tradition on this property."

In Award 10869, Carrier asserted that historically, when an employe goes on vacation, he has no rights to return to service until the first work day on which he is scheduled to return to work. It is virtually an identical case to the one before us. Contrary to Claimant's position that Third Division Award 6599, which is factually distinguishable, is persuasive, we find that there is no Agreement support or institutionalized practice that affirms his position. Awards 10869 and 18295 are directly on the point with the facts herein and we are constrained by these precedents to deny the claim. Based on these holdings, Claimant was not entitled to work on August 12, 1978, the rest day, following the end of his scheduled vacation.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1981.