NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24265
THIRD DIVISION Docket Number MW-24217

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Welder Helper L. F. Griffis, Jr. was compensated at his straight-time rate instead of at his time and one-half rate for the service he performed on certain dates during the period August 1, 1979 through September 14, 1979 (System File C-4(36)-LFG/12-35(80-14) H).

(2) The Agreement was further violated when Welder Helper L. F. Griffis, Jr. was not permitted to work his scheduled assigned hours on certain dates during the above-mentioned claim period.

(3) Welder Helper L. F. Griffis, Jr. now be allowed the difference between what he should have been paid at his time and one-half rate and what he was paid at his straight-time rate because of the violation referred to in Part (1) hereof.

(4) Because of the violation referred to in Part (2) hereof, Welder Helper L. F. Griffis, Jr. be allowed eight (8) hours of pay for each day he was not permitted to work his scheduled assigned hours during the aforementioned claim period."

OPINION OF BOARD: The essential facts of this case are not in dispute. At the time this claim arose, Claimant, L. F. Griffis, Jr., was regularly assigned as a Welder Helper to Welding Force 9079 with headquarters at Jacksonville, Florida. His normal work week consisted of eight hours, Monday through Friday, with Saturday and Sunday designated as rest days.

From the period August 1, 1979 through September 14, 1979, Carrier required Claimant to work with the Rail Gang at Tallahassee, Florida to temporarily assist welders regularly assigned to that gang. During that six week period, Claimant did not work his regular days and hours. Instead, along with the rest of the Rail Gang at Tallahassee, Claimant's work week consisted of ten hour work days, with some exceptions, and additional days off to compensate for those longer work days.

As a result of the change in Claimant's work schedule, the Organization filed this claim. In it, the Organization alleged that Carrier violated the Agreement, particularly Rule 20(f), when it altered Claimant's work week. That rule provides in relevant part:

"(f) DEVIATION FROM MONDAY - FRIDAY WEEK

If in positions or work extending over a period of five days per week, an operational problem arises which the Carrier contends cannot be met under the provisions of Section (b), and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if the Carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the current Agreement."

According to the Organization, the language of Rule 20(f) is clear and unambiguous. It provides that only an "operational problem" can permit Carrier to alter Claimant's regular Monday to Friday work week. Here, Carrier never contended, that an operational problem did exist. Furthermore, the Organization maintains that even if Carrier asserted that there was an "operational problem", it could change Claimant's work days only if he or the Organization agreed to do so. Clearly, no such agreement ever was secured or even attempted by Carrier.

In addition, the Organization argues that the Rules relied upon by Carrier in support of its position clearly do not apply to Claimant. Those Rules - Rule 38 and the April 31, 1971 Memorandum of Agreement - apply only to "make up time" for employes stationed in a camp car. Rather, he is a welder helper with stationary headquarters at Jacksonville, Florida. Thus, according to the Organization, the April 1971 Memorandum does not apply to Claimant.

For these reasons, the Organization asks that the claim be sustained. It seeks appropriate compensation for Claimant for hours and dates he was required to work beyond his normal eight hour, Monday to Friday work week.

Carrier, on the other hand, insists that it acted in conformity with the Memorandum of Agreement dated April 13, 1971 in this instance. The Memorandum reads:

"IT IS AGREED:

That in the application of Rule 38, Section I, System Forces, in making up time for the purpose of accumulating rest time for longer consecutive rest periods, may elect, under the provisions of Section, to work up to ten (10) hours on any calendar days to the extent that the total hours worked in each half month, at no additional expense to the Company, are the equivalent of the straight-time work hours therein."

According to Carrier, the Memorandum specifically allows the Rail Gang to act as it did in this dispute. That is, its hours may be increased from eight to ten per day, with additional days off, at no expense to Carrier.

In addition, Carrier argues that there has been a consistent practice on the property of assigning welders and welder helpers to assist rail gangs. In many, if not all of these instances, the welders and welder helpers were assigned

to work ten hour days and four day weeks. This was done without protest from the Organization. Thus, Carrier argues that the practice clearly supports its position. It asks that the claim be denied.

It is true as the Organization maintained, that past practice, even if proven, can not supersede clear contractual language. Thus, if only Rule 20 were at issue here, we might well find for the Organization, even though the practice is to the contrary.

However, here the April 13, 1971 Memorandum of Agreement is also at issue. The Organization argued that it applied only to system forces housed in camp cars. Carrier contended that welders assigned to assist rail gangs were also covered by its provisions. Either view is tenable under the language of the Memorandum since welders working with Rail Gangs are, arguably, part of System Forces within the meaning of the Memorandum. Where such ambiguity exists, the past practice on the property is instructive.

Here, the record evidence reveals that numerous welders and welder helpers have had their work weeks altered in virtually the same manner as Claimant. Furthermore, these changes were made without protest by the Organization until after this claim was filed. Accordingly, we conclude that the language of the Memorandum supports Carrier's position. Thus, under the facts of this case, Rule 20 is in apparent conflict with the normal work week and exceptions thereto. The Memorandum, however, allows for specific exception to the normal work week where system forces are "making up" times. Such are the facts of this case. Accordingly, the specific language of the 1971 Memorandum must prevail over the general language of Rule 20, to the extent they are in conflict.

Awards cited by the Organization in support of its position are not directly on point to the facts of this case. They deal only with the conflict between clear Agreement language and contrary past practice. We agree with the Organization that under those circumstances, clear language must prevail. Here, however, the past practice of Carrier is instructive in interpreting the vague language of the 1971 Memorandum. Furthermore, since that Memorandum specifically covers the facts of this claim, it must prevail over the general language of Rule 20. Accordingly, the claim 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.