

Form 1

Parties to said dispute waived right of appearance at hearing thereon.

On March 15, 1991, the Claimant was assigned as a Maintainer on Position 8110, which had been advertised with a Monday workweek start, with Saturday and Sunday off.

Allegedly in accordance with Rule 14 of the Agreement, the Carrier advised the employee (on March 15, 1991) that, effective March 20, 1991, assigned rest days were changed to Thursday and Friday, which prompted a claim of a violation citing, among others, Rule 18:

"RULE 18 - WORK WEEK

(b) On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

* * * *

(f) If, in positions or work extending over a period of five (5) days per week an operational problem arises which the Company contends cannot be met under the provisions of paragraph (b) of this section and requires that some of such employees work Tuesday through Saturday instead of Monday through Friday and if the Assistant Chief Engineer C&S/ET and the General Chairman fail to agree thereon, then, if the Company nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under this Agreement."

In addition, the Organization contends that the Carrier violated Rule 18 since the Carrier did not meet with the Organization or discuss the problem, as required by Rule 18(f).

Rule 14, relied upon by the Carrier, advises:

"RULE 14 - CHANGE IN POSITION

An employee may elect to retain his position or within ten (10) calendar days from the date of written notification exercise displacement rights if changes occur in any of the following conditions of his position:

- (a) Assigned rest day or days.
- (b) Headquarters.
- (c) Territorial limits.
- (d) Assigned tour of duty, except due to Daylight Savings Time.

(e) Change in technology in a plant or or section.

The ten (10) calendar days referred to in this rule will be extended by the days absent as referred to in Rule 16.

If there is any dispute over the application of item (3) it shall be resolved by the General Chairman and the Director-Labor Relations.

If a position is vacated as provided for in this Rule, it will be advertised.

The provisions of this rule shall not apply to Trainees."

The Carrier has also discussed a typographical error concerning position "3110" and "8110", and has referred to Bulletin No. "5563", as well as "5534".

The dispute, as handled on the property, does not indicate that the Carrier met with the employees, nor did it attempt to establish the "operational problems" which may have prompted its action. In this regard, see Third Division Award 22242. See, also, Second Division Award 12015 and Award 2, Public Law Board No. 4176.

We have confined our review to the factual matters raised and considered on the property and have applied those factual matters to the pertinent rules.

If, for no other reason, the failure of the Carrier to discuss the matter with the Organization suggests the necessity of a sustaining award. Accordingly, we will sustain the claim at the straight-time rate for the period of time the employee held the position in question.

A W A R D

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September, 1994