

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45401
Docket No. MW-47648
25-3-NRAB-00003-220989**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated, beginning on April 11, 2021 and continuing, when the Carrier established V-404 Tie Installation Unit and V-406 Distribution Gang with Sunday as a regular working day without the Carrier proving that an operational requirement for such existed. (System File S2129K-291/BMWE 56/2021 KLS)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants G. Harrigan, M. Juszczak, B. Ferraro, M. Saulnier, R. DeProfio, D. Enes, C. Cummings, C. Scott, D. Vachon, D. Veroneau, J. Cabrera, J. Joyce, J. Alvarez, M. Bernis, R. Lomberto, L. Gentle, M. O’Neil, C. Grant, R. Burke, J. McCabe, B. Hogan, J. Burgos, R. Savory, T. Coyne, M. Cafano, D. McKenzie, A. Nichols, A. Zola, W. McCormick, B. Madore, C. Kacey, C. Sanderson, K. Bryant, L. Bovill, L. Colon, M. Brundige, M. Doughty, M. Spicer, P. Espinola, T. Belyea, M. Kinnebrew, J. Lund, R. Ducom, C. April, M. Melo, S. Palombo, R. Borelli, C. Marelli, M. MacInnis and H. Bekker shall now have “***all Sundays worked by the Claimants *** be paid at their time and one-half rate of pay, per diem payments, safety pay and credits for vacation for each Friday not regularly scheduled while these crews operated. This Claim is also ongoing and inclusive until the violation ceases to exist.***”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Factual Background

The Claimants in this dispute are all employees who have seniority within the Carrier's Maintenance of Way Department. The Claimants are Organization members who believe that the Carrier violated Rule 29 when it formed district units, installation units and distribution gangs scheduled to work on Sunday. Rule 29 of the parties' Agreement allows the Carrier to create district units when needed to complete work among various headquarters, unlike the usual circumstance where employees work out of a single headquarters.

On February 23, 2021, the Carrier notified the General Chairman that the Carrier's Track Department intended to establish the following:

Tie Installation Crew – 2 Foreman, 2 Assistant Foremen, 1 Truck Driver "B" Rate, 5 Machine Operators "A" Rate with Hoisting License, 12 RMO "A: Rate, 6 RMO "B" Rate, 1 RMO "C" Rate, 1 Work Equipment Operator, and 10 Trackmen. This is a Per Diem crew which will work Sunday through Thursday from 7:00 am to 3:30 pm (30 minutes unpaid lunch). The reasoning behind the partial weekend schedule is due to a limited service schedule which will allow for more track time, accommodating production needs. Work will begin approximately March 31, 2021 until approximately July 1, 2021. This project will work on the Gloucester Branch, West Route Main Line and the Fitchburg Main Line. The initial headquarters/reporting point will be Rockport Layover.

Distribution Crew – 1 Foremen, 1 Truck Driver “A” Rate, 1 Work Equipment Operator and 1 Trackman. This is a Per Diem crew which will work Sunday through Thursday from 7:00 am to 3:30 pm (30 minute unpaid lunch). The reasoning behind the partial weekend schedule is due to a limited service schedule which will allow for more track time, accommodating production needs. Work will begin approximately March 31, 2021 until approximately December 1, 2021. This project will work System wide. The initial headquarters/reporting point will be Rockport Layover.

On February 25, 2021, the General Chairman objected to the creation of the Carrier’s proposed district units, stating that the Carrier had not provided an operational requirement necessitating that the two units work a Sunday to Thursday schedule. For this reason, the Organization did not agree to the creation of the district units.

The Carrier and the Organization met to confer about the district unit schedule and discussed the Carrier’s need for inclusion of Sunday as a regular shift day. At this conference, the Carrier explained that the limited schedule of trains operating on Sunday allowed for additional track time making this project possible.

The Carrier designated the Tie Installation unit as V-404 and the Distribution Gang V-406, and scheduled both for a Sunday through Thursday shift. The Carrier posted and bid the district unit work. The Claimants bid on the shifts for these district units knowing that they would work Sunday as a regular day.

Position of Organization

The Organization claims that the Carrier violated Rule 9, “Hours of Service” and Rule 29, “District Units.” The relevant provisions state:

Rule 9 – Hours of Service

- 1. Except as provided herein or in Rule 29, employees will be assigned to positions scheduled to work eight (8) hours per day exclusive of meal periods, five (5) days per week with two (2) consecutive rest days. On positions the duties of which can reasonably be met in five (5) days, the rest days will be Saturday and Sunday.**

Rule 29 District Units

I. District Units

MBCC (Keolis) may establish one or more of the following District Units not assigned fixed headquarters to work over the Seniority District.

1. Tie Installation Unit

...

Auxiliary forces that may work in conjunction with the above units:

...

2. Material Distribution Gang

...

V. Work Week

1. The normal work week for employees assigned to positions in units established pursuant to this Agreement, will consist of five (5) days of eight (8) straight time hours each, with two (2) consecutive rest days. ...

...

2. Where the Company believes an operational requirement exists that the work week of a District Unit include Saturday and/or Sunday then MBCR(Keolis) will notify the General Chairman in accordance with II.(5) above, fully explaining the operational requirement. Should the General Chairman disagree, a meeting will be promptly held for the purpose of reaching an agreement on the dispute. The district unit shall not commence until such meeting is held, or until thirty (3) days from the date of notification pursuant to II.(5). Agreement for such work shall not unreasonably be withheld.

If the parties remain in disagreement, MBCR(Keolis) may nevertheless put the assignments into effect, subject to the right of the employees to process the disputes as a grievance or claim under the rule's agreement, and in such proceedings, the burden will on MBCR (Keolis) to prove that the operational requirements exist.

The Organization contends that the Carrier did not meet its burden that operational requirements existed justifying the need for the district units working on Sunday. The Organization maintains that the Carrier must justify its need for these district units working Sundays with clear and convincing evidence or establish that a bona fide need for working Sunday.

Carrier's Position

The Carrier denies that it violated Rule 29 and argues that the Organization's reliance on Rule 9 is misplaced. According to Rule 9, employees should have Saturday and Sunday as rest days, except as provided in Rule 29. Additionally, the Carrier points to the fact that it fully complied with the notice provisions of Rule, explained why Sunday work was needed in its initial notice and subsequent conference with the Organization. Because the Claimants voluntarily bid on the shifts, knowing they would be required to work on Sundays, the Carrier argues that the Organization did not satisfy its burden since the Claimants have incurred no damages.

Analysis

This is a rules case. For that reason, the Organization has the burden of proving that the Carrier violated the agreement.

The Organization concedes that the Carrier fully complied with the notice provisions of Rule 29 regarding the creation of the district units at issue here.

Rule 29 requires the Carrier to notify the General Chairman if believes district units should work on Sunday and provide an operational requirement explaining the need for Sunda work. The evidence in this case established that the Carrier notified the General Chairman it believed the project could be completed more efficiently because of limited operations on Sundays.

Rule 29 requires that the Carrier explain why it believes operational requirements exist. The Carrier provided a bona fide reason justifying the need for district units to work on Sundays. Rule 29 allows the Organization to disagree with the Carrier's explanation, but to establish a violation and prevail on its grievance, the Organization needed to provide evidence that the Carrier's justification was not bona fide or legitimate. Simply disagreeing with the Carrier's explanation is not sufficient.

The Organization did argue that the Carrier's operational requirement was not bona fide or legitimate because it violated Rule 9. But the Organization's reliance on Rule 9 is misplaced: Rule 9 expressly excludes district units from the requirement that employees are not work on Saturdays or Sundays. For this reason, the Carrier did not violate Rule 9, and there is no evidence the Carrier violated Rule 29.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimants not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of December 2024.