

Award No. 1432

Docket No. 1336

2-Sou-EW-'51

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That the current agreement was violated when the carrier changed the assignment of F. L. Mauldin from five (5) days of work, Mondays thru Fridays, with rest days Saturdays and Sundays, to Sundays thru Thursdays, with rest days Fridays and Saturdays, effective December 18, 1949.

2—That accordingly the carrier be ordered to:

(a) Restore this employe to his proper former work week assignment of Mondays thru Fridays, with rest days Saturdays and Sundays.

(b) Additionally compensate this employe at the straight time rate for having been deprived of his right to work each Friday, retroactive to December 23, 1949.

(c) Additionally compensate this employe at overtime rates for the services which he was required to perform on each Sunday, retroactive to December 18, 1949.

EMPLOYEES' STATEMENT OF FACTS: Electrician F. L. Mauldin, hereinafter referred to as the claimant, has been the only electrician employed by the carrier at its Winston-Salem shop, North Carolina, for a number of years to date, and prior to September 1, 1949, his regular assignment of hours were from 7 A. M. to 3:15 P. M., Mondays thru Saturdays, six (6) days per week. However, effective September 1, 1949, this claimant was regularly assigned from 7 A. M. to 3:15 P. M., a work week of five (5) days, Mondays thru Fridays, with rest days Saturdays and Sundays, until Sunday, December 18, 1949, when his assignment of days was changed to a work week of five (5) days, Sundays thru Thursdays, with rest days Fridays and Saturdays.

The carrier has declined to adjust this dispute although the officers thereof only utilize the electrical workers' craft at this shop on one shift five (5) days per week.

The agreement of March 1, 1926, as subsequently amended and as revised effective September 1, 1949, is controlling.

**(III) NATIONAL RAILROAD ADJUSTMENT BOARD IS
REQUIRED TO DECIDE DISPUTE ACCORDING TO AGREE-
MENT BETWEEN THE PARTIES TO IT AND NOT OTHER-
WISE.**

Section 3, First (i) of the Railway Labor Act confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The Second Division of the National Railroad Adjustment Board is empowered only to decide the instant dispute in accordance with the agreement between the parties to it. To grant the claim of the employees in this case would require that the Board disregard the agreement between the parties thereto and impose upon the respondent conditions of employment and obligations with respect thereto not agreed upon by the parties to this dispute. Obviously, under the Railway Labor Act by virtue of which the Board functions, the Division has no authority to make such an award.

CONCLUSION

In conclusion respondent respectfully submits:

That service, duties, or operations are necessary to be performed at Winston-Salem shop where only running repair forces are employed seven days per week; therefore, under the effective agreement carrier is fully justified in staggering the work weeks of shop forces in accordance with its operational requirements.

That the assigned rest days of Claimant Mauldin were changed from Saturday and Sunday to Friday and Saturday pursuant to Rule 1(l) of the effective agreement.

That utilization of an electrician on Sunday is clearly authorized by the effective agreement, particularly Rule 1(j).

That shop craft employees have contracted with respondent to perform necessary maintenance work required on its equipment, and to effect compliance with their contract they are assigned so as to be available **when needed** and in accordance with the carrier's operational requirements.

That an electrician is needed at Winston-Salem on each of the days Sunday through Thursday; therefore, Mr. Mauldin has been so assigned and if he preferred a different work week he was privileged under the agreement to exercise a displacement right.

That the money claim of Mr. Mauldin is **not** supported by any provision of the effective agreement; that he has been correctly paid at the straight time rate for five days of 40 hours work or service each week and at the punitive overtime rate under Call or Overtime Rules for all work or service performed in excess of 40 hours or on more than five days each week; that he is not entitled to pay for work **not** performed on Friday, one of his assigned rest days, or to pay at the time and one-half rate for work performed on Sunday; that the provisions that punitive rates paid for Sunday as such were eliminated by Rule 1(j); that payment on the basis here claimed is not provided for in the effective agreement here in evidence and that, therefore, the Second Division, National Railroad Adjustment Board, has no authority to make the money award here claimed.

For all of the reasons given, the claim should, in all things, be denied, and respondent respectfully requests that the Board so hold.

FINDINGS: The Second 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.

The parties to said dispute were given due notice of hearing thereon.

Although the operation where the claimant is located operates seven days a week, there is only one position of his classification—i. e., electrician; it is a 5-day position. However, for operational reasons, the carrier has considerably more need for his services on Sunday than Friday; nevertheless, Rule 1-b specifically makes Saturday and Sunday the rest days for 5-day positions. It makes no exception for a case such as the instant one; and this Division has no authority to make such exception however much it might be warranted by operating conditions. When, therefore, the employee is required to work on one of his rest days he is entitled to time and one-half therefor. The carrier is within its rights in requiring the employee to work on one of his rest days, assuming the burden of time and one-half when it does so. Consequently, Claim "A" will be denied. Claim "B" will likewise be denied, as the employee suffered no loss as a consequence of not working on Friday, as he actually worked five days. On the other hand, Claim "C" for overtime rate, for the rest day on which he worked, is valid.

AWARD

Claim "A" denied.

Claim "B" denied.

Claim "C" sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1951.

DISSENT OF THE CARRIER MEMBERS TO AWARD NO. 1432,

DOCKET NO. 1336

Trains operate into and out of Winston-Salem, N. C., a divisional terminal, seven days per week. Operations at the Mechanical Department running repair Shop in this terminal extend over seven days per week. Service, duties, or operations are necessary to be performed seven days per week.

Rule 1, here involved, is a general rule and applies to all shop crafts embraced in the agreement as a whole rather than to each craft separately. It specifically provides that "The expressions 'positions' and 'work' * * * refer to service, duties, or operations necessary to be performed the specified number of days per week (i.e., either five, six or seven) and **not** to the work week of individual employees," thus making it abundantly clear that the terms "**Five-day positions**," "**Six-day positions**" and "**Seven-day positions**" as used in paragraphs (b), (c) and (d) and as defined in the Note at beginning of the rule refer to service, duties, or operations of the carrier necessary to be performed five days, six days or seven days a week as the case may be. Rule 1 also provides that "work weeks (assignments of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven) may be staggered in accordance with the carrier's operational requirements."

While 40-hour work week rules were designed to restrict, to the extent consistent with carrier's operational requirements, work which may be performed on Sunday, nevertheless they recognize that a rigid adherence to the precise pattern that may have been in effect immediately prior to September 1, 1949 with regard to the amount of Sunday work that may be necessary is not required, that changes must be taken into account, and that types of work which have been needed on Sundays may hereafter be "assigned on Sunday." Since the running repair shop at Winston-Salem has always been operated seven days a week it certainly cannot be argued that the carrier assigned claimant to a type of work which had not been previously needed and performed on Sunday.

The decision of the majority in this case is based on the erroneous premise that claimant is occupying a **"Five-day position"** solely because he is the only electrician employed at the roundhouse and work of his craft is performed only five days a week. This however completely disregards the fact that claimant is one of twelve shop craft employees, all of whom are covered by the same Shop Crafts' Agreement, employed at this roundhouse, and that "work" (i.e., the "service, duties, or operations.") at the roundhouse is necessary to be performed seven days a week. Since the work at the roundhouse is admittedly necessary to be performed seven days a week, claimant is occupying a **"Seven-day position"** and any two consecutive days may be his assigned rest days. Therefore, the carrier properly assigned him a 40-hour work week of Sunday through Thursday, at the straight time rate of pay, with Friday and Saturday as his assigned rest days. There is nothing in 40-hour work week rules requiring or even contemplating that an employee be paid at the punitive rate for any part of the assigned hours constituting his 40-hour work week. Under the rules, claimant is entitled to pay at the straight time rate for the assigned hours constituting his 40-hour work week and at time and one-half for work required of him on either or both of his assigned rest days, which in this case are Friday and Saturday. The award is defective because of the erroneous assumption that claimant occupies a **"Five-day position"** rather than a **"Seven-day position."**

There can be no doubt but that all shop craft employees at Winston-Salem Shop are filling **"Seven-day positions"**; therefore, the carrier is fully justified in staggering 40-hour (5-day) work week assignments of shop forces in accordance with its operational requirements by assigning the electrician a 40-hour work week of Sunday through Thursday with consecutive rest days of Friday and Saturday.

The findings in this award are incompatible with the plain provisions of the applicable Shop Crafts' Agreement, revised effective September 1, 1949, and for reasons set forth above we dissent.

C. S. Cannon
J. A. Anderson
R. P. Johnson
M. E. Somerlott
A. G. Walther