

Award No. 1566
Docket No. 1458
2-Pull-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the assignments of Painter E. Cohn and Upholsterer A. Kerndl were improperly changed from a work week Monday through Friday, with rest days Saturday and Sunday to working on newly created jobs with a work week Thursday through Monday, with rest days Tuesday and Wednesday.

2. That accordingly the carrier be ordered to restore the aforementioned employees to a proper work week of Monday through Friday, with rest days of Saturday and Sunday.

EMPLOYEES' STATEMENT OF FACTS: Painter Cohn and Upholsterer Kerndl, hereinafter referred to as the claimants are regularly employed by the carrier at its Sunnyside Yard, Long Island, New York and during the period August 1, 1948, to September 1, 1949, held regular assignments as follows:

Painter Cohn, hours—9:00 A. M. to 5:00 P. M., Monday through Saturday, six (6) days per week.

Upholsterer Kerndl, hours 8:00 A. M. to 4:00 P. M. Monday through Saturday, six (6) days per week.

Effective September 1, 1949, the aforementioned assignments were changed as follows:

Painter Cohn, hours 9:00 A. M. to 5:00 P. M., Monday through Friday, rest days Saturday and Sunday.

Upholsterer Kerndl, hours 8:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday.

The claimants were reassigned to the following work weeks effective June 4 and June 24, 1950, respectively:

Painter Cohn, hours 9:00 A. M. to 5:00 P. M., Thursday through Monday, rest days, Tuesday and Wednesday.

on Sundays. In view of the fact that it is stated in the record and was not denied by the organization that Pullman cars are departing in road service with upholstering and painting defects, which corrections the organization admits should be made at the time and one-half rate, the conclusion cannot be reached that the work in question can be postponed until Monday or some other day of the week other than Sunday.

The performance of such work on Sundays is vitally necessary to the best interest of both the employees and management. The very core of Pullman business is bottomed upon service. It is impossible to supply the traveling public with the quality of Pullman service necessary to enable the company to maintain its competitive position in the transportation industry unless its equipment is put into service with all serious defects corrected, both as to mechanical operation and as to exterior and interior appearances. Pullman business is essentially a luxury business, and Pullman cars must be both attractive and comfortable.

2. THE NATIONAL RAILROAD ADJUSTMENT BOARD MUST DECIDE THIS DISPUTE IN ACCORDANCE WITH THE AGREEMENT BETWEEN THE PARTIES.

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 and 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 agreements between the parties to it. The company submits that a sustaining award in this dispute would require the Board to disregard the plain intent of the agreements between the parties and would impose upon the company a condition of employment and obligation with respect to the agreements not contemplated by the parties to this dispute. It is the company's position that the payment for Sunday work at the time and one-half rate is not provided for in the effective agreements here in evidence. Therefore, the Second Division, National Railroad Adjustment Board, should not require The Pullman Company to restore Painter Cohn and Upholsterer Kerndl to a work week of Monday through Friday with rest days of Saturday and Sunday.

CONCLUSION

In this submission, The Pullman Company has shown that for many years the company worked one third of its painting and upholstering forces on Sundays in Sunnyside Yards, Pennsylvania Terminal District, and continued so to do in greater or lesser degree until 13 months prior to the effective date of the forty-hour work-week agreement, during which 13 months the company temporarily discontinued Sunday work for reasons of economy.

The company has shown that the positions in question were established Thursday through Monday with rest days on Tuesday and Wednesday in conformity with the provisions of Article 7, paragraphs (f) and (k) of the agreement of July 25, 1949. The company also has shown that the painting and upholstering services performed by Painter Cohn and Upholsterer Kerndl are required to be performed on Sundays in the vital interest of Pullman service and that, therefore, under the controlling agreement the company was fully justified in establishing the seven-day positions in question.

For all the reasons given, the claim in behalf of Painter Cohn and Upholsterer Kerndl should in all things be denied.

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.

The carmen of System Federation No. 122 contend the Pulman Company improperly changed the work week of Painter E. Cohn and Upholsterer A. Kerndl from Monday through Friday to Thursday through Monday. It asks that these employees be restored to their proper work week of Monday through Friday.

The facts are that prior to September 1, 1949 both claimants had six-day assignments, Monday through Saturday. Effective as of September 1, 1949, to meet the requirements of the five-day week, both claimants were assigned work weeks of Monday through Friday. Kerndl kept such assignment until June 4, 1950 when he was assigned a work week Thursday through Monday. Cohn kept his assignment until June 24, 1950 when it was changed to a work week of Thursday through Monday. It is the changes effective June 4, 1950 and June 24, 1950 of which complaint is made.

So as to be readily available for reference herein the provisions of the controlling agreement, which are important to a determination of the questions here presented, will be set forth. They are as follows:

"Article 7

NOTE: The expressions 'positions' and 'work' used in this Article 7 refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

(c) **General.** The Company will establish, effective September 1, 1949, for all employees represented by the organization or organizations signatory hereto, subject to the exceptions contained in this Article, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Company's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is further subject to the provisions of this Article which follows:

(d) **Five-day Positions.** On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

(e) **Six-day Positions.** Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(f) **Seven-day Positions.** On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

(k) **Sunday Work.** Existing provisions that punitive rates will be paid for Sunday as such are eliminated, except as provided in the 'Exception' of paragraph (a) of this Article 7. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change."

By the "Note" the agreement plainly provides that "positions" and "work" refer to services, duties or operations necessary to be performed the specified number of days per week and not to the work week of the individual. Consequently, our former concepts to the effect that a position meant the work week of the individual is no longer applicable. The plain meaning of sections (c), (d), (e) and (f) of Article 7 is that a position is a five, six or seven-day position, for the purpose of fixing rest days, if the services, duties or operations to be performed are necessary to have performed on five, six or seven days a week, as the case may be. This is so even though the assignments made are only for five days for the reason that all assignments under the forty-hour week agreement, with certain exceptions not here material, must be for five days and that fact has no relation to the question of whether the position performs services, duties, or operations which it is necessary to have performed on five, six or seven days per week. This thought is well expressed in Award 5556 of the Third Division as follows:

"All regular assignments under the agreement are for five days each week. Six and seven-day assignments no longer exist. Whether a position is a five, six or seven-day position is not affected by the individual assignment of an employee."

Further, there is nothing in the agreement making the establishment of relief positions to cover rest days a condition precedent. The one is not conditioned on the other. Just as long as the status of the operations to which claimant is assigned remains unchanged and the need for employees on seven days a week to perform the duties and services of such operations continues the rest days can be assigned accordingly.

To like effect in principle see Award 1528 of this Division and 5545, 5555, 5556 and 5581 of the Third Division.

The factual situation as to the performance of these duties immediately before September 1, 1949, did not bring it within the provisions of Article 7 (f). Consequently, the company could not justify its actions thereunder.

It is abundantly clear from sections (c) and (k) of Article 7 that it was not the intention of the parties to place the company's operations as of September 1, 1949, in a frozen or static condition. Section (c) provides: "the work weeks may be staggered in accordance with the Company's operational requirements." Section (k) provides: "a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required".

However, this authorization is qualified by the following language of Section (k), to wit: "The elimination of such provisions (punitive pay for Sunday work) does not contemplate the reinstatement of work on Sunday which can be dispensed with."; and "This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday." (Insertion ours.)

From an examination of all the provisions of Article 7, including the "Note", we have come to the conclusion that the authorization permitting the Company to stagger work weeks in accordance with its operational requirements is a rule of necessity and not of convenience. That is, in order to justify the assignments here made it must show that it was necessary, in the operation of its business, that the work be performed on Sundays.

The record does not show the Company's operational needs in the Sunnyside Yards of the Pennsylvania Terminal District, New York City, for the services of painters and upholsterers materially changed at or about the time these assignments were made in June of 1950. While some phases of the work possibly increased others decreased. The over-all needs remained about the same as they had been prior thereto when the Company had not found it necessary to regularly assign either painters or upholsterers on Sun-

days. It may be, and probably is, convenient to have these two men assigned to work on Sundays but we do not think the facts show the Company's operations necessarily require that what they are doing be done on Sundays. In view thereof we find the first part of the claim to be meritorious and that it should be sustained.

The second part of the claim would only be justified if the duties of painters and upholsterers in the Sunnyside Yards of the Pennsylvania Terminal district could be reasonably met in five days. The record does not show that to be a fact. In fact, it shows that for a long time the Company has needed six days each week to perform it. That is the basis upon which it was being done immediately before September 1, 1949. Consequently the Company can assign in accordance with section (e) of Article 7. Part two of the claim is without merit. It is therefore denied.

AWARD

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1952.