Award No. 1599
Docket No. 1475
2-AT&SF-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carmen G. Gregory, R. L. Clemans and T. D. Williams were improperly assigned to a work week, Wednesday through Sunday with rest days of Monday and Tuesday.

2. That accordingly the carrier be ordered to:

a) Assign these employes to a proper work week, Monday through Friday with rest days Saturday and Sunday.

b) Make these employes whole by compensating them additionally at the applicable overtime rates instead of straight time for the service which they were assigned to perform on each Saturday and each Sunday, retroactive to September 17, 1950.

c) Make these employes whole by compensating them additionally in the amount of eight (8) hours at the applicable rate of pay for each Monday and Tuesday, retroactive to September 17, 1950, because they were laid off to equalize the time due to the assignment to work their proper rest days.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, Carmen G. Gregory, R. L. Clemans and T. D. Williams, hereinafter referred to as the claimants worked regularly an assignment of six days per week, Monday through Saturday, first shift hours 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M. on the car department repair track located at Needles, California.

On or subsequent to September 1, 1949, these claimants were arbitrarily assigned by the carrier to positions of car repairers on the first and only shift 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M., Wednesday through Sunday, with rest days of Monday and Tuesday at Needles, California, car department.

There is no assignment of carmen (car repairers) on either the second or third shift at Needles car repair department, relief or otherwise.

explained in the carrier's submission in the case covering an identical claim from Wellington. What was said in that case applies with equal force and effect to this case.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Effective October 16, 1950, the claimants in this case were assigned a work week of five consecutive days, Wednesday through Sunday, with rest days Monday and Tuesday, in car repair work on the carrier's "running" repair tracks at Needles, California. Before the Forty-Hour Week Agreement went into effect on September 1, 1949, these employes had been given a Monday-Saturday work week.

It appears from the record that before September 1, 1949, on various Sundays both before and after March 19, 1949, when the above-mentioned agreement was signed, from six to eleven car repair track employes were employed on "running" repairs at time-and-one-half rates. It appears further that car repair work at Needles was and is of two main kinds: (1) "heavy" or "dead" work, which involves repairs of substantial nature to cars taken out of train service for relatively long periods; and (2) "running" repairs of relatively minor importance, which can be effected on repair tracks without much delay and which do not involve removal of cars from service for considerable periods.

The collective bargaining agreement between the parties includes the 40-hour week provisions that became generally effective on September 1, 1949. There is also in evidence a letter of agreement, dated October 6, 1950, effective October 16, 1950, and signed by the parties, which the organization contends is specifically controlling in the instant case.

In determining the merits of the claim here before us we must first consider whether the October 6, 1950 letter does indeed apply to the facts of this case. If we find that it does, we are then relieved of the necessity for interpreting the more general pertinent provisions of the 40-hour week agreement.

The issue posed by the letter is this: Did the carrier therein agree not to assign regular Wednesday-Sunday work weeks to employes performing "running" repair work? It is the organization's burden to establish that an affirmative answer to this question is the correct one. It is especially important that this obligation be met, for to us the language of the letter has substantial elements of ambiguity. True the letter says that at "all" points on the railroad where "car work" is performed, the work week will be Monday through Friday. This would seem to be clear and inclusive. But the ambiguity arises in large part from two exceptions stated in the letter: (1) "such shops" that are working six days a week are excepted. The use of the words "such shops" raises doubt that the letter was intended to apply to non-shop car repair work, i.e., "running" repairs on car tracks. In other words, it is conceivable that the letter was meant to apply only to "heavy" or "dead" work done in car repairs shops. (2) "Staggered" work weeks of Tuesday-Saturday as well as Monday-Friday are specifically permitted at three named points (none of which is included in the eleven similar cases before us involving this carrier and this organization). No mention is made of Sunday work, seven-day positions, or Wednesday-Sunday work weeks.

The carrier contends that the letter was intended to apply solely to car shop work on heavy repairs. In support of this contention it asserts that (1) before and after the letter was signed, at two of the excepted points mentioned in the letter there were employes assigned to Wednesday-Sunday work weeks for "running" car repairs, with no claims progressed thereon by the organization; and (2) the organization itself does not seriously contend that the letter is controlling, for it has frequently stated that, if the carrier can establish its regular use of employes on Sundays to make running car repairs before the advent of the 40-hour week agreement, the carrier may properly assign Wednesday-Sunday work weeks today.

We do not find presented in the record by the organization sufficient evidence to convince us that the carrier's contentions in respect to the letter lack validity. By the same token we do not find that the organization has established the applicability of the letter to the facts of this case. On this issue the organization's case rests on little beyond counter-assertion.

Then our decision on the instant claim must rest on our interpretation of the relevant provisions of the 40-hour week agreement between the parties. Rule 6(c) is cited by the organization. To us this Rule is to be interpreted as permitting the carrier to employ men on Sunday at pro rata rather than overtime rates on a Wednesday-Sunday work week if such work week is found to be necessary in the light of the carrier's operational requirements. Rule 1(e) in conjunction with Rule 6(c) definitely authorizes the staggering of work weeks where the nature of the work requires it.

In a case such as this, the organization is burdened with the obligation of establishing that Sunday work at pro rata rates under a Wednesday-Sunday work week is not necessary to the effective operation of the carrier. One approach to this problem would be to show that before the 40-hour week agreement was signed the carrier did not employ men on "running" car repairs on Sundays. That is, if such a showing could be made, there might well be a presumption that what was not necessary earlier has not been necessary since 1949. We do not find that the organization has succeeded in sustaining this portion of its burden of proof. Its statements (signed by certain employes), in our judgment, are successfully controverted by the evidence introduced by the carrier on the nature of the work performed and the numbers of men and hours employed on numerous Sundays during 1949.

There is thus a presumption that Sunday work has been necessary after September 1, 1949. This alone, however, does not conclusively demonstrate that such work has actually been needed since that date. The carrier's operational requirements might have changed.

The organization has the burden also of establishing the fact of such change. But the record does not disclose that this burden has been adequately borne. We find that the organization has not successfully refuted the carrier's statements in respect to the necessity for Sunday "running" car repair work since September 1, 1949. The weight of the evidence favors the carrier's assertion that its competitive position would be somewhat jeopardizd and the well-being of shippers and, to some extent, of the country would be lessened if such repairs were held over till Monday.

The organization argues that one indication of the lack of need for such work and such a work week is the carrier's failure to set up regular relief positions therefor.

The carrier has not shown that such relief positions have in fact been created. But even if they have not, we do not deem this to be compelling evidence of lack of necessity for seven day operation, including Sunday work and the Wednesday-Sunday work week. It may well be that under the parties' agreement seven day operation requires the creation of regular relief assignments, where possible, for the performance of whatever work

is necessary on the rest days of the incumbents of regular positions in such service. But this issue, as such, is not before us.

Finally, the record shows that (1) whereas an average of about seven men per Sunday were employed on "running" repair work at Needles before September 1, 1949, the carrier thereafter used only three Wednesday-Sunday assignments; and (2) there were thus substantially fewer employes so assigned than the number on the Monday-Friday work week. We do not find these facts to be evidence of lack of need for Sunday work. Nor do we think the parties' agreement requires in seven day service the same number of men to be used Wednesday-Sunday as are used Monday-Friday.

In the light of all the circumstances in this case, we think a denial award is in order.

AWARD

Claim (a), (b), and (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1952.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 1599, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616 and 1617

Prior to September 1, 1949 the regular bulletined hours for car department repair track forces were 8:00 A. M. to 12:00 noon and 12:30 P. M. to 4:30 P. M., Monday through Saturday (six days a week) in conformity with Rule 2 of the agreement effective August 1, 1945. The regular bulletined hours of these forces did not include Sundays or Holidays.

The agreement as amended September 1, 1949 did not change the regular bulletined hours of the repair track forces and did not authorize the inclusion of Sundays or Holidays in the weekly five day assignment of these forces.

The letter agreement of October 6, 1950 constitutes a mutual settlement of the dispute regarding staggered work weeks for repair track forces. Since the instant repair track force is not one of the points where a staggered work week is authorized, it follows that the claim should have been sustained retroactive to and including October 16, 1950.

/s/ Edward W. Wiesner

/s/ R. W. Blake

/s/ A. C. Bowen

/s/ T. E. Losey

/s/ George Wright