

Award No. 1643

Docket No. 1557

2-L&N-CM-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement the Carrier improperly assigned the entire Shop Track Force, composed of Carmen and Carmen Helpers, to a work week of Tuesday through Saturday, with rest days of Sunday and Monday, effective September 1, 1949.

2—That accordingly the Carrier be ordered to:

- a) Assign these employes, namely, Carmen Ben F. Taylor, M. D. Schrock, Ely Howard, A. G. Rogers, E. B. Long, and Carmen Helpers Dillard Cornett, W. J. Eve, J. S. Thomas, R. P. Rowland, Morgan Rowland, Robert Price, and McCoy Thompson to a proper work week, Monday through Friday, with rest days of Saturday and Sunday.
- b) Make these employes whole by compensating them additionally at the applicable overtime rate instead of straight time rate for services which they were assigned to perform each Saturday, retroactive to September 1, 1949.
- 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, retroactive to September 1, 1949 because they were laid off to equalize the time due to the assignment to work their proper rest days.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949 the shop track forces including some of the above named employes, hereinafter referred to as the claimants, worked regularly an assignment of five days per week, Monday through Friday, hours of assignment 7:00 A.M. to 3:30 P. M. shop track, Loyall, Kentucky.

On September 1, 1949, all assignments of shop track forces, both carmen and carmen helpers, were arbitrarily changed from an assignment of Monday through Friday to a work week assignment of Tuesday through Saturday, with rest days Sunday and Monday.

Monday cars 24 hours is 2447 car days. Assuming a fifteen-day turn-around for coal cars, that means that 163 additional round trips could be made during the three year period by the same number of cars simply because the repair forces at Loyall worked Saturday instead of Monday. In days of car shortages and an intensified defense effort this is a factor which cannot be ignored.

Prior to establishing the Tuesday-through-Saturday work week for repairmen at Loyall Yard, the carrier explained to the employes' representative that such a work week was necessary in order to meet the needs of the service. It requested the concurrence of the employes' organization in the establishment of the varied work week but could not secure it, the general chairman of the carmen, W. O. Poteet, insisting by letter of August 11, 1949—

“ that all 5 day assignments on shop tracks , involving employes of the carmen's craft, which require no relief assignments to protect the rest day periods, be assigned Monday through Friday, excepting only a sufficient number to protect the operation of train movement.”

In so insisting the employes' general chairman failed to give consideration to the following portion of the report of the Emergency Board to the President of the United States, dated December 17, 1948, recommending the establishment of a 40-hour work week for non-operating rail employes:

“ **It is perfectly clear that it is completely unrealistic to suggest that the railroads operate only Mondays through Fridays.** Work must be done on every day of the year, and the imposition of penalty rates on certain days will not alter this fact. Similar situations have been faced in other continuous process industries and the general practice is to provide in such instances that Saturdays and Sundays be treated as ordinary working days for pay purposes and to permit management to schedule work assignments on a staggered 5-day workweek basis. Frequently, the staggered week is accompanied by a rotating of days off as equally as possible. Work beyond 5 days or over 40 hours in any week is paid for at time and a half. These practices should be adopted by this industry as well, because apparently they are workable and desirable. **Consistent with their operational requirements,** the Carrier should allow the employes two consecutive days off in seven and **so far as practicable** these days should be Saturdays and Sundays.” (Emphasis supplied).

The employes likewise failed to give effect to the clear and unmistakable provisions of the applicable agreement which permit deviation from the Monday-through-Friday work week when this is reasonably necessary, that is, when an operational problem requires such deviation.

The carrier submits that it has shown there existed at Loyall an operational problem which required that the Loyall repairmen be assigned a Tuesday-through-Saturday work week; that when this need was explained to the employes and they refused to consent thereto, the carrier was authorized by the applicable agreement to put the changed work week in effect; and that the claim of the employes should, therefore, be denied in its entirety.

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.

The Organization contends that the car repair force working on the shop tracks at Loyall, Kentucky, was improperly assigned Tuesday through Saturday instead of Monday through Friday. The claims are for a day's pay for each Monday not worked since September 1, 1949 and time and one-half for each Saturday worked during the same period. It is the contention of the claimants that the applicable rule is:

"On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday." Rule 1 (b), current agreement.

The carrier admits that the positions involved are five-day positions but contends that the deviation from Monday-Friday week rule is controlling. This rule provides:

"If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of paragraph (b) of this rule, and requires that some of such employes work Tuesday to Saturday instead of Monday to Friday, and the employes contend the contrary, if the parties fail to agree thereon, and if the carrier nevertheless puts such assignment into effect, the dispute may be processed as a grievance or claim under this agreement." Rule 1 (f), current agreement.

The record establishes the following facts: Loyall Yard is located in the heart of the Harlan coal fields and is the distribution and assembly point for 46 mines in the adjacent area. The mines generally operate five days per week, Monday through Friday. The loaded cars come into Loyall Yard the afternoon and night of each day the mines operate. It is evident therefore that the repair force is needed one day following the operation of the mines. The evidence shows that for the 1949-1952 period of operations there were 708 cars awaiting repairs on Mondays compared to a total of 3155 cars awaiting repairs on Saturdays. The holding of defective cars from Saturday to Monday to effect repairs results in a large car day loss to the carrier and an unnecessary delay to the shippers. This, in our opinion constitutes an operational problem within the meaning of Rule 1 (f).

The parties agree that claimants are working five-day positions. Under ordinary circumstances, they must be assigned Monday through Friday. But where carrier can establish that some work, on positions the duties of which can reasonably be performed in five days, is required on Saturdays, the carrier may apply Rule 1 (f) and assign all the force Tuesday through Saturday. If work was also required on Monday, the positions would be six-day positions under Rule 1 (c) and Rules 1 (b) and 1 (f) could have no application. Where the records show, as here agreed, that work can be performed on five days in each week, and some work is required on Saturdays and none is required on Mondays as a result of an operational problem, the carrier may properly assign employes to work Tuesday through Saturday as provided by Rule 1 (f), current agreement. Awards pertinent to the question here presented, though not strictly in point, are: Awards 1565, 1566, Second Division; Awards 5555, 5556, 5557, 5467, Third Division. For the reasons stated there has been no violation of agreement provisions shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of March, 1953.