Award No. 1644

Docket No. 1540

2-GC&SF-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. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman D. R. Sanders and Carman Helper H. P. Cox 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 of Monday through Friday with rest days of Saturday and Sunday.

b) Make these employes whole by compensating them additionally at the applicable overtime rates instead of straight time for service which they were assigned to perform on every Saturday and every Sunday, retroactive to May 9, 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 each Tuesday retroactive to May 9, 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, Carman D. R. Sanders and Carman Helper H. P. Fox, 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, 12:30 P. M. to 4:30 P. M., on the car department repair track at Fort Worth, Texas.

On or subsequent to September 1, 1949, these claimants were arbitrarily assigned by the carrier to positions as car repairer and helper 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 Fort Worth, Texas.

work week is staggered some employees cannot have these specific days off. That the Board expected deviations from this pattern is made abundantly clear by its repeated use of the expressions 'staggered work week', 'in accordance with operational requirements,' and 'so far as practical.' The great variety of conditions met in the railroad system of the country and even varied conditions on a single railroad require flexibility on this matter. The tenor and substance of the Board's discussions and recommendation show definitely that the Board intended to permit the carriers to stagger work-weeks.

IN CONTRAST WITH THE OBLIGATIONS OF THE CARRIERS TO SUSTAIN THE BURDEN OF PROOF IN THE MATTER OF NON-CONSECUTIVE REST DAYS, IT IS FOR THE EMPLOYEES HERE TO SHOW THAT SOME PARTICULAR OPERATIONAL REQUIREMENTS OF THE CARRIER ARE NOT BETTER MET BY HAVING THE WORK WEEKS STAGGERED.

It should be pointed out that in general the Board's intent will be satisfied if employees on positions which have been filled 7 days per week are given any 2 consecutive days off, with the presumption in favor of Saturday and Sunday * * *.

THE BOARD EXPRESSLY DENIED THE ORGANIZATIONS' REQUESTS FOR A UNIFORM WORK WEEK OF MONDAY THROUGH FRIDAY, AND FOR PUNITIVE PAY FOR SATURDAYS AND SUNDAYS AS SUCH. IT HAD IN MIND THE CONTINUOUS NATURE OF SOME OF THE OPERATIONS ON RAILROADS. * * *"

It is crystal clear that the assignments to protect service on Saturdays and Sundays as in effect at Fort Worth and elsewhere are strictly in keeping with the principles enunciated by the Emergency Board. While the employes have repudiated the letter-understanding of October 6, 1950, reproduced in full in this submission, that letter-understanding related to assignments of Tuesday through Saturday and had no application whatsoever to the staggering of car repair forces to protect 7-day service.

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.

Claimants were assigned on or about September 1, 1949, to positions at Fort Worth, Texas of car repairer and helper, Wednesday through Sunday, with rest days of Monday and Tuesday. They contend they should have been assigned Monday through Friday, with rest days of Saturday and Sunday. Claim is made for wage losses sustained because of the alleged improper assignment.

The Organization contends (1) that a letter agreement under date of October 6, 1950, requires that these claimants be assigned Monday through Friday, with Saturdays and Sundays as rest days; (2) that such positions were not worked on Sundays prior to September 1, 1949, and consequently they were not governed by Rules 1(h) and 6(c), current agreement; and that (3) relief employes have not been assigned in accordance with Rule

1(i), current agreement, and for that reason the work is not that of a seven day position.

Claimants are carmen who were assigned for the purpose of making running repairs to freight cars coming into Fort Worth. The letter agreement of October 6, 1950, deals with "heavy" or "dead work" which involves repairs of a substantial nature to cars that must be taken out of service for relatively long periods. Running repairs are those of relatively minor importance which can be effected on repair tracks without much delay and without removing cars from service for any extended period. Consequently the letter agreement does not apply to the situation before us. This very question was determined in Award 1599. We think the reasoning of that award is correct on this point.

It is the contention of the carrier that work is required in making running repairs at Fort Worth on each day of the week including Sunday. It is true that the evidence shows that employes were assigned six days per week, Monday through Saturday prior to the forty hour work week agreement effective September 1, 1949. The evidence shows, however, that work was required on Sundays which was performed on employes' rest days on a time and one-half basis. This constitutes proof that work was actually required to be performed after September 1, 1949. Briefly stated the Forty-Hour Work Week Agreement eliminated time and one-half pay for Sundays as such. It contemplated that Sunday work would necessarily have to be performed in the operation of the railroads but that no more Sunday work was to be performed than was necessary. Evidence that certain types of work were assigned to be performed on Sundays prior to September 1, 1949, constitutes strong evidence of a necessity for its performance after that date. Likewise, the non-performance of certain types of work on Sunday prior to September 1, 1949, constitutes strong evidence that it was not required after that date. The agreement does not prohibit the assignment of a type of work on Sunday after September 1, 1949, even though it was not so assigned prior to that date, if such work is necessary to be performed on Sundays. The proof required must, however, be sufficient to overcome the presumption that it is not necessary to be performed on Sunday because of the fact that it was not so performed prior to the advent of the Forty-Hour Work Week Agreement. But in the case before us, it is clear that the work was necessary to be performed on Sundays prior to September 1, 1949 and that it was necessary to be performed thereafter. The claimants have failed to establish that Sunday work was not required during the period for which claim is made. We think the applicable provisions of the Forty-Hour Work Week Agreement, particularly Rules 1(e), 1(h) and 6(c), sustain the action of the carrier in its determination that Sunday work was required during the period involved. See Award 1599, Second Division; Awards 5247, 5581, 5545, 5546—Third Division.

It is next contended that relief employes were not assigned in accordance with Rule 1(i), current agreement, and that this is indicative that the work was not that of seven-day positions. This is not necessarily so. Where the work can be efficiently performed by staggering of assigned employes as provided by the agreement, the necessity for relief employes does not exist. The assignment of relief employes is not a condition precedent to the establishment of a seven day position. Award 1566. Relief assignments are required to be made when there is work necessary to be done. The establishment of relief positions is not made a preliminary condition to the existence of a seven-day position. Award 5545, Third Division. It is clear, therefore, that the failure to assign relief employes is not a controlling factor in the dispute.

The burden is upon the employes to show that the carrier misapplied the agreement in establishing seven day positions at Fort Worth for the employes assigned to the work of making running repairs on cars coming into that point. Awards 1599, 1617, Second Division; Awards 5555, 5556, 5557, Third Division. This it has failed to do by the greater weight of the evidence. We necessarily conclude that the assignments in question were properly made and that a denial award is in order.

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.

LABOR MEMBERS' DISSENT TO AWARDS Nos. 1644 to 1655, inclusive.

Prior to September 1, 1949, the "regular bulletined hours" for car department repair track forces were 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 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. (See Second Division Awards 1432, 1443, 1444)

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 employed at one of the points where a staggered work week is authorized, the majority erroneously excluded such point from the application of the aforementioned Letter Agreement. The claims 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