

Award No. 1647

Docket No. 1547

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 EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carmen H. H. Schrader, Jr. and O. C. Pfeffer and Carmen Helpers V. Loesch and C. F. Kohlman, 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 Sunday, retroactive to October 5, 1950.
- c) Make these employes whole by compensating them additionally in the amount of eight (8) hours at the applicable rate of pay for every Monday and every Tuesday retroactive to October 5, 1950 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, Carmen H. H. Schrader, Jr. and O. C. Pfeffer and Carmen Helpers V. Loesch and C. F. Kohlman, 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 1:00 P. M. to 5:00 A. M. on the car department repair track at Belleville, Texas.

On or subsequent to September 1, 1949, these claimants were arbitrarily assigned by the carrier to positions as car repairers and helpers on the first and only shift, 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., Wednesday through Sunday with rest days of Monday and Tuesday at Bellville, Texas.

carrier had no operational need for Saturday and Sunday service at Bellville Yard. They have simply denied that such need existed without offering any evidence or argument in support of that denial. They have merely taken the position that the staggering of work weeks of car repair forces engaged in running repair work was a violation of the forty hour work week agreement and the letter-understanding dated October 6, 1950, which by their actions had been repudiated.

(4) That the assignment should be Monday through Friday.

In an effort to appease the employees, the carrier abolished all of the complained of Wednesday through Sunday assignments on the car repair track at Bellville Yard as of the close of shift on Sunday, February 11, 1951, and effective February 12, 1951, assigned the entire car repair track force to work Monday through Friday with Saturday and Sunday rest days (see page eleven of carrier's statement of facts). The unjustified and uneconomical operation resulting from the elimination of the Wednesday through Sunday assignments is fully explained in the tabulations appearing on pages 11 and 12 of the carrier's statement of facts and proves conclusively that the carrier actually leaned backward in eliminating these assignments and assuming the burden of punitive overtime (time and one-half) for work which had to be performed on the repair track on Saturdays and Sundays to protect the carrier's business. Sufficient evidence has been submitted by the carrier in addition to the tabulations appearing on pages 11 and 12 of the statement of facts (see tabulations appearing on page 15, also carrier's Exhibits G, H and I) to show without a shadow of doubt that the carrier had prior to the adoption of the 40-hour week, also subsequent to that date and still has work on the car repair track at Bellville Yard which must be performed seven days per week. The fact that the entire car repair track force at Bellville Yard has been assigned to a work week Monday through Friday since February 12, 1951, pending the outcome of this dispute, does not alter the fact that it was and still is necessary to repair loaded cars and empty tanks on Saturdays and Sundays for which service the carrier has since February 12, 1951, paid for at the time and one-half rate. The carrier contends that the assignment of the claimants to a work week Wednesday through Sunday during the period from October 20, 1950, through February 11, 1951, was proper under the provisions of Rules 1(d), (e), (h) and 6(c) of the supplemental agreement dated May 13, 1949, and Rule 1 (m) of the supplemental agreement dated August 15, 1950, heretofore quoted. The carrier's position in this respect is the same as that set forth in similar claims now on file, or in the process of being prepared for filing, with the Board and is fully explained in the carrier's submission in the case covering an identical claim from Fort Worth, Texas, involving Carman D. R. Sanders and Carman Helper H. P. Cox, Docket 1540. What was said in that case applies with equal force and effect to this case and the carrier will not attempt to burden the Board with a repetition.

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 employees 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 Belleville, Texas, of car repairers and helpers, 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 controlling rules are the same as those involved in Award 1644 and the interpretations there made are incorporated herein by reference. The burden is upon the employes to show that the carrier misapplied the agreement in establishing seven-day positions at Belleville for the employes assigned to the work of making running repairs on cars coming into that point. This they have failed to do by the greater weight of the evidence. The result is therefore controlled by the reasoning of Award 1644 and 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.

Edward W. Wiesner

R. W. Blake

A. C. Bowen

T. E. Losey

George Wright