**Award No. 3546**
**Docket No. 3190**
**2-GM&O-CM-'60**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.**

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## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES' DEPARTMENT — A. F. OF L. — C.I.O.**
**(Carmen)**

**GULF, MOBILE AND OHIO RAILROAD COMPANY**
**(Northern Region)**

DISPUTE: CLAIM OF EMPLOYES:

1. A. That under the current agreement the Carrier improperly established a seven (7) day operation per week on the Venice, Illinois Repair Track effective June 3, 1957.

B. That Carmen E. K. Scheffler, L. N. McAdams, J. W. Sharp, R. L. Green, W. E. Convery, C. C. Parmley, C. J. Schroeder, J. Tessar, J. M. Wilson, H. E. King, M. E. Cooper, C. R. Smith, A. E. Keck and Carmen Helpers E. Spangler, R. E. Townsend, E. Owen and A. L. Conway were improperly assigned to a work week with rest days other than Saturday and Sunday or Sunday and Monday.

2. That the Carrier be ordered to:

A. Assign these employes to a proper work week with rest days either Saturday and Sunday or Sunday and Monday.

B. Make these employes whole by compensating them additionally at the applicable overtime rates instead of the straight time rates for service performed on Sundays subsequent to June 3, 1957; additionally compensate them in the amount of eight (8) straight time hours for each day assigned to rest subsequent to June 3, 1957 that would be a work day when assigned to a proper work week.

EMPLOYES' STATEMENT OF FACTS: At Venice, Illinois, the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, operates

According to the provisions of Article (B), (E) and (K) of Rule 1 of the aforementioned July 29, 1949 agreement, and the factual situation with respect to repair track forces at Venice, the seven-day positions in question here were properly established, claimants have been properly compensated, and all the instant claims are without merit and should be denied.

The Second Division has several times had disputes before it where the question at issue was the same as that which is here presented.

In its Docket No. 1475, the Division denied claims of carmen which were similar to those here at issue and were based on similar facts. In its findings (Award No. 1599) the Division said that its decision "must rest on our interpretation of the relevant provisions of the 40-hour week agreement". The rules applicable in the instant case are the same as those applicable there. There the Division said, in part: ". . . 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) [our Rule 1(B)] in conjunction with Rule 6(c) [our Rule 1(K)] definitely authorizes the staggering of work weeks where the nature of the work requires it."

Later, similar issues were similarly decided by the Division in its Awards Nos. 1644, 1653 and 1669.

Then, in its Award No. 1714, the Division again denied a similar claim. In that case the employes made precisely the same contentions as they make in the instant case, and based them upon circumstances that were quite similar to those out of which the instant claims grew. In its findings, the Division said: "Awards 1599 and 1644, together with other awards based thereon, involve similar or like situations under the same rules. Those awards have come to the same conclusion arrived at therein and fully support a denial of the claim here made."

Both because the wording of the applicable agreement provisions clearly so indicate, and because of the interpretation of those provisions by the Second Division, carrier's act of establishing seven-day positions in the repair track force at Venice was, in the circumstances, entirely proper, and so provides no basis whatever for the instant claims.

Carrier contends that the instant claims are without merit and should be denied, and prays the Second Division to so decide the award.

**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.

Parties to said dispute were given due notice of hearing thereon.

The question presented is whether the Carrier violated the controlling agreement by establishing a number of seven day positions, effective June 3,

1957, for its carman repair track in Venice Yard, East St. Louis. Prior to this date the regularly assigned work weeks of employes in this force were Monday through Friday and Tuesday through Saturday. Carrier states "individual car repairmen were used on Sunday to repair only those cars on which delay would be the most hurtful," and that such work that should have been performed on Sundays was postponed. It further states that despite its efforts to confine track activity to Monday through Saturday, "experience compelled it to face the fact that more Sunday work by carmen was an operational requirement which should not be dispensed with."

Examination of the entire record on this point discloses that operational requirements necessitated the performance of work by the repair track force in Venice Yard on Sunday as well as on other days of the week. The Organization nevertheless contends the agreement barred the Carrier from establishing seven day positions at this location because a seven day work week was not in operation here prior to September 1, 1949—the effective date of the 40 hour week agreement.

The evidence is that prior to September 1, 1949 a regularly assigned six-day work week was in effect at this location but that the repair track also was regularly manned on Sundays on an overtime basis. Rule 3 of the contract then in effect (Northern Region agreement) provided that Sunday was an overtime day as such and further specified that: "Sunday and holiday work will be required only when absolutely essential to the continuous operation of the Railroad." Rule 8(a) of that agreement declared: "At points where sufficient number of employes are employed, employees shall not work two consecutive Sundays (holidays to be considered as Sundays)." Sunday work therefore was rotated among the repair track carmen at Venice Yard in compliance with this rule, which effectively barred the specification of Sunday as a regularly assigned work day for individual employes. This clause was deleted from the revised contract which incorporated the provisions of the 40 hour week agreement.

Under the confronting facts, we conclude that the subject repair track was conducted as a seven day operation prior to September 1, 1949, that the Carrier has established the need for conducting this operation on a seven day basis beginning June 3, 1957, and that the action complained of therefore was not in violation of the controlling agreement provisions dealing with the establishment of the 40 hour week.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1960.

## DISSENT OF LABOR MEMBERS TO AWARD NO. 3546

The majority states in the findings that prior to June 3, 1957 the regularly assigned work weeks of employes in the instant force were Monday

through Friday and Tuesday through Saturday and that "The carrier has established the need for conducting this operation on a seven day basis beginning June 3, 1957." Thus the majority admits that prior to June 3, 1957 the work weeks of the claimants were staggered (the staggered work weeks having been established in accordance with Rule 1 (D) ). However in the face of the admitted facts the majority holds that the action complained of by the employes was not in violation of the agreement. Had the majority applied the controlling provisions of the agreement to the admitted and true facts they would have held that the carrier had violated the cited agreement provisions and that the claimants should be restored to their duly estbalished work week assignments in conformity with Rule 1 (D).

**Edward W. Wiesner**

**R. W. Blake**

**Charles E. Goodlin**

**T. E. Losey**

**James B. Zink**