



Award No. 6208

Docket No. 6069

2-LV-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That, in violation of the current agreement, the Carrier changed the assignments of Carmen D. Carey, A. Kirchner, M. Meiser and R. Kemmerer, from a work week Monday through Friday, rest days Saturday and Sunday, to newly created assignment of work week Tuesday through Saturday, rest days Sunday and Monday.

2. That accordingly the Carrier be ordered to:

- (A) Restore the above named employees to their former work week assignments of Monday through Friday, rest days Saturday and Sunday.
- (B) Additionally compensate these employees at the straight time rate for having deprived them of their right to work each Monday retroactive to Monday, June 2, 1969.
- (C) Additionally compensate these employees at over-time rate for services they were required to perform on each Saturday, retroactive to Saturday, May 31, 1969.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a repair track force at Oak Island, New Jersey, consisting of carmen who from September 1, 1949 until May 31, 1969, worked five (5) days a week, Monday through Friday, rest days Saturday and Sunday, a period of almost twenty (20) years, during which time no carmen or carmen helpers were assigned to work on Saturday and Sunday on the repair track.

Effective May 29, 1969, positions of the claimants on the shop track Monday through Friday, rest days Saturday and Sunday, were abolished.

"... it is obvious the carrier violated these provisions when the claimants were arbitrarily assigned to a work week of five days, Tuesday through Saturday, rest days Sunday and Monday."

Carrier's Exhibits H through K will show the normal standard advertisements posted for the three positions of Carmen, Oak Island Shop, the written bids by Carmen with the right to bid and the assignments of the senior bidders. This is a far cry from the "arbitrarily assigned" situation described by the employees.

Also on page 2 of the same letter it is indicated there has been no increase in the number of carmen employed on the shop track, merely a reduction in the work force through Monday and Friday with that reduction assigned to Tuesday through Saturday. The inference is that there is a requirement to employ additional force. Not so; no rule of agreement requires this. Employees have again lost the theme. It is the important, rush, loaded and other "demand" cars creating the operational problem, and the change of force work days since June 2, 1969, has alleviated the problem.

Statement on page 3, same letter, that "carrier's own records show they have loaded cars that have been shopped laying around Oak Island Transportation Yards for weeks without any effort made to get them placed on the shop track for repairs. . . ."

This statement is rather extreme, to say the least, and is denied by carrier as apparently made without knowledge of the facts or the circumstances such as, cars badly damaged in derailment, etc., reported to car owners for disposition, reported for disposition of lading, etc., and without knowledge of the actual reason making it necessary at times to hold cars as in the circumstances above described.

Claim of the employees should not be sustained for the following reasons:

1. Carrier has shown an operational problem existed, requiring some car repair force to work Saturdays in order to provide the service demanded by our customers. The regular Monday to Friday car repair force could not meet the requirements of our patrons. Furthermore, experience had proven that if we did not provide prompt service in the manner desired by such patrons, we would expect to lose customers to competing railroads or truck lines.
2. Carrier made every effort to explain the need for changing the work week for the assignments involved, to the representatives of the organization and was unsuccessful, making it necessary to proceed with the change to meet the operational problem.
3. Employees have not shown any violation of the Agreement or that operational problem had not arisen and/or did not exist.

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 waived right of appearance at hearing thereon.

The claim presented here consists of the allegation that abolition of work assignments (Monday to Friday with Saturday and Sunday as rest days) of the four claimants, and the creation of three new assignments (Tuesday through Saturday with rest days of Sunday and Monday), and creation of one new vacation replacement assignment were violative of the controlling Agreement.

Rule 1(g) of the Agreement provides that:

"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 Section (c) above, and requires that some such employes work Tuesday to Saturday instead of Monday to Friday, and the employes contend to the contrary, and if the parties fail to agree thereon, then if the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under these rules."

Decision No. 7 of the Forty Hour Week Committee, December 16, 1949, when it clarified section "(f) Deviation From Monday-Friday Work", enunciated what became Rule 1(g), cited above, and then further elaborated and clarified, stating:

"There is no absolute right to make work assignments from Tuesday to Saturday on any positions the duties of which can reasonably be met in five days as specified in Section 1(f)." (Emphasis ours.)

The Board is persuaded by the evidence and argument in the record that Carrier has met the test of "reasonableness" set forth above, which is a prerequisite to the establishment of Tuesday to Saturday assignments, and Carrier further has also met the requirements to explain to representatives of the organization the operational problems which "cannot be met under the provisions of Section (c)", and the necessity for the creation of Tuesday to Saturday assignments to meet said problems, as is further required by the 1949 Forty Hour Week Committee, Decision No. 7.

Carrier's grounds for the establishment of Tuesday to Saturday assignments essentially are to:

1. Eliminate and reduce delay over the weekend in the repair of cars, thus to be able on Monday to provide a larger number of cars and thus to meet the Monday needs and requirements of Carrier's customers.
2. Reduce or eliminate overtime payments on weekends stated as being some 1,200 hours in six months.

That Carrier did not so deploy this segment of the work force for twenty years is cause for melancholy, and is not a bar to Carrier's present economic utilization of its manpower.

It is certainly understandable that employes prefer work assignments of Monday to Friday. It is also understandable that employes find it difficult to adjust to changing a pattern of work assignments of twenty years' standing. However, the exigencies of operations and the need to provide comparable or better service to customers than is provided by competitive modes of freight transport deserve paramount consideration for the reason, among others, that such more rational manpower deployment tends to assure employment and income security for employes. Carrier's action to solve its operational problems must, and it is found, does meet the requirements of the Contract, and the Rules and Decisions of the Forty Hour Week Committee, which makes provision for economic deployment of manpower.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 22nd day of November, 1971.