

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood Railway Carmen/Division of TCU

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That under the current working Agreement, as amended, the Atchison, Topeka and Santa Fe Railway Company did unilaterally and arbitrarily violate Rule 1(e) of the September 1, 1974 Agreement, as amended, by abolishing all of the repair track positions with Saturday and Sunday as off days and rebulletined all of the repair track positions with Monday and Tuesday as off days.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate the following listed Claimants eight (8) hours pay for each Monday in May, 1988 and eight (8) hours pay for each Tuesday in May, 1988 that they were denied the right to work on those Mondays and Tuesdays and were forced to observe those Mondays and Tuesdays as their off days in violation of the Agreement for the total amount of hours specified below at their pro rata rate of pay.

F. W. George	twenty-four	(24)
E. L. Schielock	twenty-four	(24)
D. K. Amberg	twenty-four	(24)
F. Lopez	twenty-four	(24)
J. T. Cano	twenty-four	(24)
C. R. Waldrop	twenty-four	(24)
T. H. Wootton	sixteen	(16)
J. R. Cervantez	sixteen	(16)

Time claimed was for the Mondays and Tuesdays in May, 1988 that the Claimants would have normally worked and should have been allowed to work (Mondays and Tuesdays) in accordance with the Agreement and were made to work on Saturdays and Sundays in violation of the Agreement. Claim is made only for time and days that the Claimants should have been allowed to work and normally would have worked.

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 employes 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.

In May 1988, Carrier, over the protest of the Organization, instituted a number of personnel changes in the Carmen's Craft at Amarillo, Texas. These changes resulted in several force reductions and realignment of various assignments and changes in work week schedules for the remaining Carmen. The eight individuals listed in the Statement of Claim were assigned work weeks of Wednesdays through Sundays with Mondays and Tuesdays off. No Carmen were worked at the repair facility on Mondays and Tuesdays. Claims were filed seeking 8 hours additional pay for each Monday and Tuesday in May 1988 on the basis that Claimants' assignments, as five day positions, were required to have Saturday and Sunday rest days and that they were being denied the opportunity to work on Mondays and Tuesdays.

These Claimants, as well as several others covering months subsequent to May, 1988, were given extensive handling by the parties. On November 10, 1988, Organization and Carrier representatives met in conference at the Amarillo repair track to discuss the matter. Following this meeting the facility was placed on a seven day operation with the eight Carmen's positions rescheduled with varying work weeks.

Claims ceased to be filed after that time. However, the Organization refused to withdraw this Claim and others filed in the meantime.

Before this Board the Organization argues that the positions that remained following the May 1988 personnel changes were five day positions and as such the days off were required to be Saturdays and Sundays.

The Carrier defends on a variety of grounds. First it argues that a time limit default occurred in the Organization's appeal. It also argues that the Claim was amended as it was being appealed through the various steps on the property. On the merits, Carrier contends that operational conditions dictated the need for Carmen assignments with other than Saturday and Sunday rest days and such positions are permitted by the Agreement. Finally, it concludes that none of the Claimants suffered any wage losses as a result of the work weeks placed into effect between May and November and that any penalty payments would constitute an unwarranted windfall.

We are not persuaded that Carrier's procedural arguments have merit. They are rejected and this matter will be disposed of on its merits.

Rule 1, Hours of Service - Basis of Pay, provides in part:

"(d) The work week for all employees, subject to the exceptions contained in this Agreement, will be 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven. The work weeks may be staggered in accordance with Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Agreement.

(e) On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

(f) Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(g) On positions which have been filled seven days per week any two consecutive days may be rest days with the presumption in favor of Saturday and Sunday."

Between May and November 1988, the positions occupied by Claimants were "five day positions." Paragraph (e), requires that five day positions have Saturdays and Sundays as days off. Carrier argues, though, that operational requirements were such that Mondays and Tuesdays were light repair days at Amarillo, as compared with Saturdays and Sundays, thus it had license to assign days off other than Saturday and Sunday. There most certainly are situations where this contention may have merit, but this is not one of them, because the positions were not staggered at the time.

Paragraph (d) permits the staggering of work weeks in accordance with Carrier's operational requirements. If practicable the days off should still be Saturday and Sunday. However, if operational requirements do not make it practicable the days off need not be Saturdays and Sundays. But this would only come into play in a staggering work week situation.

Staggering work weeks were not present at Amarillo between May and November 1988. The work weeks of all Carmen jobs were the same. All had Mondays and Tuesdays as rest days. It was only after the conference on November 10, 1988, that staggering work weeks were put in place and five of the eight positions were given Saturday and Sunday rest days with the other three given different days off during the week, two ending up on positions with Mondays and Tuesdays as rest days.

Thus, even though Carrier has submitted an impressive amount of evidence indicating that it had an operational requirement which dictated a need for days off other than Saturdays and Sundays for its Carmen force, it did not have license, under the Agreement, to establish work weeks with such rest days on positions, "the duties of which can reasonably be met in five days," unless the positions were staggered with others. Such work week staggering was not present on the dates of this Claim, thus the Agreement was violated.

On the matter of reparations for the violation, Carrier pleads that all Claimants worked forty hours. Two Claimants ended up with work weeks identical to that assigned in May. The fact that two Claimants are now assigned positions with Mondays and Tuesdays as rest days and that all Claimants worked forty hours a week during the Claim period does not alter the fact that each, during the Claim period were assigned positions with work weeks which were improperly established under the Agreement.

Carmen are entitled to perform service on position with a work week established in accordance with the terms of the Agreement. When the Agreement requires that a position have Saturday and Sunday as rest days then that is what had ought to be established. When Carrier, over the protests of the Organization, unilaterally proceeds to put in place work weeks which are in violation of the provisions of the Agreement it does so at the risk of paying claims for the violation.


The Agreement was violated. The Claims will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1991.