

Award No. 1610

Docket No. 1480

2-AT&SF-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Coast Lines)**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carmen L. Avilez, J. O. Trejo and Carman Helper George M. Howlett 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, Monday through Friday with rest days Saturday and Sunday.
- b) Make these employes whole by compensating them additionally at the applicable overtime rates instead of the straight time rate for the service which they were assigned to perform on each Saturday and Sunday retroactive to August 16, 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 August 16, 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 (car repairers) L. Avilez, J. O. Trejo and Carmen Helper George M. Howlett, 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 12:30 P. M. to 4:30 P. M. on the car department repair track located at Bakersfield, California.

The next question relates to the staggering of the work-week and Saturdays and Sundays as the days of rest. Obviously, if the 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 Bakersfield and elsewhere are strictly in keeping with the principles enunciated by the Emergency Board. While the employees 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 which was fully explained in the carrier's submission in the case covering an identical claim from Wellington. What was said in that case applies with equal force and effect to this case.

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.

After the 40 Hour Week Agreement became effective on September 1, 1949, car repairers L. Avilez and J. O. Trejo and carman helper G. M. Howlett, claimants in this case, were assigned to Wednesday-Sunday work weeks, with rest days of Monday and Tuesday, on the carrier's "running" car repair tracks at Bakersfield, California. Before the above-mentioned date these employees had been assigned to Monday-Saturday work weeks.

As in the case decided by Award No. 1599, the organization here has the burden of establishing that the carrier's action was and is in violation

of the letter of agreement of October 6, 1950, or of the provisions of the 40-Hour Week Agreement, signed by the parties.

For the reasons set forth in our award No. 1599, we do not find that the organization has sustained this burden. We think the organization has failed to show that (1) the letter of agreement is controlling in respect to "running" car repairs of the sort involved in the instant case; (2) there is and has been, since September 1, 1949, no need for the assignment of the protested work weeks; and (3) such assignments are and have been in violation of the meaning and intent of the 40-hour week rules.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: (Sgd) Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January, 1953.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 1599, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, and 1617.

Prior to September 1, 1949 the regular bulletined hours for car department repair track forces were 8 A.M. to 12 noon and 12:30 P.M. to 4:30 P.M., 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 Sundays or 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.

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 one of the points where a staggered work week is authorized, it follows that the claim 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