

Award No. 1645

Docket No. 1545

2-AT&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)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carmen P. Neri, L. E. Castro and Carman Helper L. Granlee, 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 each Saturday and Sunday, retroactive to May 13, 1951.
- 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 May 13, 1951 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 P. Neri, L. E. Castro and Carman Helper L. Granlee, hereinafter referred to as the claimants, worked regularly an assignment of six days per week, Monday through Saturday, first shift hours 7:30 A.M. to 12:00 Noon and 12:30 P.M. to 4:00 P.M. on the car department repair track at Bakersfield, California.

On or subsequent to September 1, 1949, these claimants were arbitrarily assigned by the carrier to positions as car repairers and helper on the first

mains little to add to what has previously been said, except to note that during hearings on the several cases before this Board the employes have repeatedly stated that there is no dispute between the parties as to the propriety of staggering car repair track forces—that the sole issue is whether the facts establish that duties, service or operations which are needed to be performed seven days per week were performed prior to September 1, 1949.

POSITION OF CARRIER: The carrier submits that it has clearly and conclusively demonstrated by its submissions and exhibits in the cases covered by Dockets 1479 and 1480 that it is necessary to its continuous operation at Bakersfield that the service, duties or operations here involved be performed seven days per week, and were performed seven days per week prior to September 1, 1949. This practice is strictly in keeping with the principle enunciated in the Emergency Board's Supplemental Report of February 27, 1949, from which the following is quoted:

"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. * * *"

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.

Claimants were assigned on or about September 1, 1949, to positions at Bakersfield, California, of car repairers and helper, 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 Bakersfield 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