Award No. 1655
Docket No. 1556
2-GC&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 EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1 .That under the current agreement Carmen L. L. Stephens and M. H. Dale, were improperly assigned to a work week Tuesday through Saturday with rest days of Sunday and Monday.

2. That accordingly the Carrier be ordered to:

a) Assign these employes to a proper work week, 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 retroactive to October 26, 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, retroactive to October 26, 1950 because they were laid off to equalize the time due to the assignment to work their proper rest days.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, Carmen L. L. Stephens and M. H. Dale, 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 at Cleburne, Texas.

On or subsequent to September 1, 1949, these claimants were arbitrarily assigned by the carrier to positions as car repairers on the first and only shift 8:00 A.M. to 12:00 Noon and 12:30 P.M. to 4:30 P.M. Tuesday through Saturday with rest days of Sunday and Monday at Cleburne, Texas.

The letter of understanding of October 6, 1950, was consummated dealing with the proper work week, etc., a copy of which is submitted herewith and identified as Exhibit A.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

Findings:

* * * The Carrier is within its rights in requiring the employe to work on one of his rest days, assuming the burden of time and one-half when it does so. Consequently, Claim 'A' will be denied. Claim 'B' will likewise be denied, as the employe suffered no loss as a consequent of not working on Friday, as he actually worked five days.**

Award:

Claim 'A' denied.

Claim 'B' denied."

(3) That the letter of October 6, 1950, signed by Mr. J. P. Morris, general manager, mechanical department, is controlling.

A careful reading of the letter-understanding dated October 6, 1950, clearly indicates that it applied only to staggering car repair forces on a Monday-Friday and Tuesday-Saturday basis, and that it had no application whatsoever to the staggering of car repair forces in seven-day service as contemplated by the provisions of Rule 1, paragraph (h) of the Supplemental Agreement dated May 13, 1949, which reads:

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

The employes have not at any time in their handling of this dispute on the carrier's property submitted any argument or evidence to show that the carrier had no operational need for Saturday and Sunday service at Cleburne. They have simply denied that such need existed without offering any evidence or argument in support of that denial. They have merely taken the position that the staggering of work weeks of car repair forces engaged in running repair work was a violation of the "Forty Hour Work Week Agreement" and the letter-understanding dated October 6, 1950, which by their actions had been repudiated.

(4) That the assignment should be Monday through Friday.

The carrier's position in this respect is the same as that set forth in similar claims now on file, or in the process of being prepared for filing, with the Board, and is fully explained in the carrier's submission in the case covering a somewhat identical claim from Fort Worth, Texas, involving Carman D. R. Sanders and Carman Helper H. P. Cox, now on file with the Board and covered by Docket No. 1540. What was said in that case applies with equal force and effect to this case and the carrier will not attempt to burden the Board with a repetition.

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 Cleburne, Texas, of car repairers, Tuesday through Saturday with rest

days of Sunday and Monday. 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 Cleburne 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