

Award No. 1712
Docket No. 1580
2-AT&SF-MA-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier assigned Machinist M. C. Thomson to an improper work week on Sunday through Thursday with rest days Friday and Saturday effective November 11, 1951 at Oklahoma City, Oklahoma.

2. That accordingly the Carrier be ordered to:

a) Restore this employe to his former work week assignment of Monday through Friday with rest days of Saturday and Sunday.

b) Make this employe whole by additionally compensating him at the time and one-half rate for the services which he was assigned to perform each Sunday retroactive to Sunday, November 11, 1951.

c) Make this employe whole by compensating him in the amount of 8 hours at his applicable rate of pay for each Friday he was not permitted to work retroactive to Friday, November 16, 1951.

EMPLOYES' STATEMENT OF FACTS: At Oklahoma City, Oklahoma, the carrier maintains two shifts of machinists and employs there a total of three machinists. Prior to November 11, 1951, these machinists were assigned as follows:

- "1. Machinist M. C. Thomson, first shift, 7:00 AM to 4:00 PM, with a lunch period of one hour, Mondays through Fridays, with rest days Saturday and Sunday.
2. Machinist J. D. Stacy, second shift, 5:00 PM to 1:00 AM, with a lunch period of twenty minutes, Wednesdays through Sundays, with rest days Monday and Tuesday.

program has a combination of elements: five 8-hour days, 40 hours per week, two consecutive days off each week, Saturdays and Sundays as the rest days, staggered work weeks and relief assignments. (Emphasis supplied.)

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 rail road 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 WEEK 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 clear that the assignments to protect service on Saturdays and Sundays as in effect at Oklahoma City are strictly in keeping with the principles enunciated by the Emergency Board.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In considering this claim it should be remembered that provisions for punitive rates of pay for Sunday work, as such, have, since September 1, 1949, been eliminated. See Rule 6(c) of the parties' agreement.

The work here involved consists primarily of maintenance work on locomotives in the form of items of running repairs necessarily deferred until the locomotives lay-over, when they must be given this service, plus monthly Federal inspection and necessary repair work in connection therewith. This work, as has already been indicated, must, insofar as possible, be done on the regular lay-over days of locomotives. Consequently the assignments of the employees doing it must necessarily be so arranged as to have the maxi-

mum force available on the day, or days, on which the greatest number of locomotives are laying over so as not to make it necessary to remove them from the service for that purpose.

The record discloses that it has always been necessary to have these services, duties and operations performed on all seven days of the week. Consequently carrier could assign any two consecutive rest days to employees assigned thereto subject, however, to a presumption in favor of Saturday and Sunday. See Rule 1.(h). This presumption, however, is subject to carrier's right to stagger the work week of such employees in accordance with its operational requirements. See Rule 1.(e).

Rule 6.(c), after eliminating punitive rates of pay for work on Sunday, as such, goes on to provide:

"The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change."

Clearly this rule gives flexibility to carrier's right to assign its employees in seven-day services to work weeks which include Sunday as a work day. Its right to do so depends upon the necessity of its need for having such services performed on that day. In that respect there is nothing in the agreement limiting the number of men who can be so assigned if necessity for doing so exists.

With a change in its service needs carrier rearranged its switching assignments at Oklahoma City so that, commencing September 22, 1951, the greater number of locomotives were laying over on Sunday. It did not immediately make the change which is here protested, doing so effective November 11, 1951. However, from September 22nd to November 11, 1951 it had all three machinists working on Sundays, the same as after the change, the only difference being it had one of them, during this period, working on an overtime basis.

We find, commencing September 22, 1951, the change in carrier's operational requirements, which resulted from a change in its service needs, made it necessary for carrier to have the greater number of machinists on duty on Sunday in order to perform these services and that, under the rules of its agreement covering them, it had a right to stagger their work weeks, as it did effective November 11, 1951, in order to meet this situation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1953.