

Award No. 1714

Docket No. 1586

2-GC&SF-CM-'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 EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman J. A. Nash and Carman Helper Grover Haynes 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 employees to a proper work week, Monday through Friday with rest days of Saturday and Sunday.

(b) Make these employees 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 each Sunday retroactive to September 1, 1949.

(c) Make these employees 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 September 1, 1949 because they were laid off to equalize the time due to the assignment to work their proper rest days.

EMPLOYEES' STATEMENT OF FACTS: Carman J. A. Nash and Carman Helper Grover Haynes, hereinafter referred to as the claimants, are regularly employed by the carrier at Sweetwater, Texas, on the repair track.

Prior to September 1, 1949 the regular bulletined hours of the force on this repair track established pursuant to Rule 2, were 7:00 A.M. to 12:00 Noon and 1:00 P.M. to 4:00 P.M., Monday through Saturday. The claimants held regular assignments within this force (6 days per week).

No employees were regularly assigned on Sunday by bulletin or off the overtime board. Occasionally, the carrier used an employee to work on Sunday and on such Sundays, the hours constituting a basic day were not worked.

a small portion of the Sundays immediately prior to September 1, 1949, the fact remains that the organization representatives, in processing the instant dispute with the carrier, have not at any time advanced any argument or proof that the carrier has not had since September 1, 1949, service, duties or operations that necessitated the assignment of one or more employes to work on the repair track on Saturdays and Sundays.

The carrier asserts:

(1) It had necessary work to be performed on the repair track immediately prior to September 1, 1949, as reflected by the joint check made on December 4, 1951 (carrier's Exhibit E).

(2) The amount of work to be performed on the repair track on Sundays has increased subsequent to September 1, 1949 (see page 21 of this statement of facts and carrier's Exhibits F and H).

(3) A rigid adherence to the precise pattern for handling the work on Sundays prior to September 1, 1949, is not required (see paragraph (c) of Rule 6 of the supplemental agreement of May 13, 1949, quoted on page 21 of this statement of facts). In other words, while the carrier was able to utilize the train yard force to perform a large portion of the necessary work on the repair track on Sundays prior to September 1, 1949, it has not been able to do this subsequent to September 1, 1949, and the only alternative left was for the carrier to assign a small portion of the repair track force to handle such work.

(4) The Wednesday through Sunday assignment of a small portion of the car repair force (one man most of the time and not exceeding two men at any time) since September 1, 1949, is fully justified and is necessary to the successful operation of the carrier. Carrier's Exhibit G indicates the number of cars which the carrier has found necessary to repair on the repair track at Sweetwater on Sunday subsequent to September 1, 1949.

In conclusion, the carrier has shown that the Wednesday through Sunday assignments complained of were strictly in accordance with Section (h) of Rule 1 of the agreement of May 13, 1949, and that there has not been a "reinstatement" of work on Sunday contrary to Section (c) of Rule 6 of that agreement; quite to the contrary, there has been merely a **continuation and increased amount** of necessary Sunday work since September 1, 1949.

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.

The work involved is the making of running repairs to freight cars moving through Sweetwater, Texas, on carrier's line as well as those received from and delivered to other carriers in interchange. Prior to September 1, 1949 all carmen and carmen helpers were assigned to work six days each week, Monday through Saturday. All work of this nature performed by them on Sundays was, as such, paid for at time and one-half. With the advent of the Forty Hour Week the existing provisions of the agreement so providing were eliminated. See Rule 6(c) of the parties' agreement. As of September 1, 1949 carrier assigned some employes of this class to a work week including Saturdays and Sundays as work days. Claimants are presently

so assigned and contend carrier's doing so is not permitted under its agreement covering them and its doing so is improper.

It is contended that doing so is prohibited by a "Letter of Understanding" dated October 6, 1950. It will be noted that this "Letter of Understanding" came into existence long after this claim had its inception and could hardly be said to be a basis therefore at that time. However, even so, we do not think it would support the claim here made after its execution. We think Awards 1599 and 1644 of this Division correctly construed it when it was therein stated that it applied solely to "heavy" or "dead work" performed in car repair shops to cars that have been taken out of service for that purpose and not to running repairs performed on car repair tracks.

Rule 1.(h) of the parties agreement provides that when it is necessary that the services, duties or operations of the carrier be performed on each of the seven days of the week that carrier may then assign any two consecutive days of the work week as rest days with a presumption in favor of Saturday and Sunday. This presumption is, however, subject to carrier's right to stagger the work week in accordance with its operational requirements. See Rule 1.(e).

It is clear from section (e) of Rule 1. and Section (c) of Rule 6. that it was not intended that Carrier's operations should become frozen or static as of September 1, 1949. Section (e) of Rule 1. provides, in this regard, that; "the work weeks may be staggered in accordance with the carrier's operational requirements." Section (c) of the Rule 6. provides, in this regard, that; "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."

It is true that the elimination of punitive rates for Sunday work, as such, was not intended to authorize carrier to reinstate work on Sundays when it could be dispensed with. On the other hand it does "recognize that the number of people on necessary Sunday work may change." Rule 6.(c). The question then is, was it necessary to have any of the work being done by these employees performed on Sunday?

The work being performed on Sundays consists of making running repairs to loaded freight cars and empty tank cars while in transit. The evidence shows that prior to September 1, 1949 some of this type of work was performed on Sundays and paid for at overtime. Since September 1, 1949 the need for having it done on Sundays has somewhat increased. Not only have carmen and carmen helpers been regularly assigned thereto since September 1, 1949 but at times additional forces have been used and paid at time and one-half. There are several reasons why it is necessary to have this work performed on Sundays: Primarily it is to prevent delay of cars in transit and thereby render more satisfactory service to shippers; also the fact that occasionally perishables would be damaged if delayed in shipment but more important is that such shipments are usually consigned to meet a certain market and if late in arriving, and loss results therefrom, carrier would be liable; and the fact that it helps to alleviate any car shortage or to prevent one from coming into being. We think the record fully establishes that it has always been necessary to have a certain amount of this work performed on Sundays and that the necessity therefore continues to exist. In this respect we do not think the record discloses any abuse of this right by the carrier. In fact, it shows carrier has kept at a minimum the number of men assigned with Sunday as one of their work days, considering its need for having such work performed thereon.

Awards 1599 and 1644, together with other awards based thereon, involve similar or like situations under the same rules. Those awards have come to the same conclusion arrived at herein and fully support a denial of the claim here made.

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.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1714

The award of the majority is based upon an erroneous interpretation of the agreement governing the employment of the claimants. (See Awards 1432, 1443 and 1444). The agreement as amended September 1, 1949 did not change the "regular bulletined hours" of the repair track force and therefore the instant assignment of claimants, Wednesday through Sunday, was improper and the claim of the employees should have been sustained.

R. W. Blake

A. C. Bowen

T. E. Losey

Edward W. Wiesner

George Wright