Award No. 1824
Docket No. 1646
2-CGW-MA-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 73, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Machinists)

CHICAGO GREAT WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement Machinist Theodore Bjorklund was unjustly deprived of a day's work per week during the period of January 7, 1950, to May 1, 1950.

(2) That, accordingly, the Carrier be ordered to additionally compensate the aforementioned Machinist in the amount of one day's pay each week for a period of sixteen (16) weeks through the aforesaid period.

EMPLOYES' STATEMENT OF FACTS: The carrier made the election at the St. Paul, Minnesota, roundhouse, effective January 7, 1950, to assign Machinist Theodore Bjorklund, hereinafter referred to as the claimant, a work week of four days in lieu of a work week of five days. The claimant is assigned to relieve Machinist Michael Dunford on his rest days of Saturday and Sunday on the day shift and to relieve Machinist Ralph Blanck on his rest days of Monday and Tuesday, who is employed on the night shift.

Effective May 1, 1950, the claimant was assigned to relieve the day shift machinist on Saturday and Sunday, and the night shift machinist on Monday and Tuesday, and was assigned on each Thursday on the day shift to fill out a five-day work week.

The carrier has refused to adjust this dispute by compensating the claimant a day's pay for each week he was only permitted to work four (4) days per week during the period of January 7, 1950, to May 1, 1950.

The agreement effective February 1, 1924, as reprinted January 2, 1938, and subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that, under Decision No. 1 rendered by the Forty Hour Week Committee, dated September 21, 1949, a copy of which is submitted herewith, and identified as Exhibit A, with particular attention to that part reading:

> "1. Guarantees of individual agreements were not changed by the agreement of March 19, 1949, except to reduce the guarantee to five days per week.

cases now before the Second Division involves the **employment** of a furloughed man **to fill the places of regularly assigned employes** on their rest days. Carrier maintains there is no material difference in the reason giving rise to the "employment," i.e., whether to fill the places of regularly assigned employes who laid off or to fill the places of regularly assigned employes off on rest days—the principle involved is the same—the force was not increased or reduced and Rule 27—"Reduction of Forces"—has absolutely no application. However, if Rule 27 were applicable (which is refuted by the evidence), claimant in this dispute actually received four days work each week and was permanently on notice that his employment was limited to four days' relief work per week, i.e., Saturday through Tuesday, and he knew before starting work on Saturday that his services were not required on Wednesday, Thursday and Friday of each week.

Prior to September 1, 1949, the governing agreement contained no provisions for regular relief assignments to absorb Sunday or rest day work on seven day positions, but it did contain Rule 8, reading:

> "Employees regularly assigned to work on Sundays or holidays, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known."

In other words, employes (regular or relief) performing service on Sundays and holidays prior to September 1, 1949, were guaranteed that they would "be allowed to complete the balance of the day unless released at their own request"—there was no other guarantee, either to regularly assigned employes or those called to take the place of such employes.

The employes are relying on the provision of old Rule 27 pertaining to reduction of hours to forty per week before reducing the force—such provision obviously had reference to the operation of the shop and not to the working hours of the men. In the case at issue the shop was in operation 16 hours per day, 7 days per week, and no reduction of either hours or forces is involved; hence, the rule could have no application whatsoever.

Any type of guarantee by its very nature is a matter which is given very serious consideration in the negotiation thereof and when agreed to is expressed in clear and unambiguous language and not by indirection or implication as the employes would have us believe. If the parties had intended a guarantee by the terms of Rule 27, language could and would have been adopted to dispel any doubt as to the purpose of the rule.

The burden is upon the employes to prove that claimant not only occupied a "regular relief assignment" within the meaning of Rule 1½ (e) quoted above but also that the controlling agreement (effective February 1, 1924) contained a "guarantee rule" prior to the adoption of said Rule 1½ (e)—(Article II, Section 1, Paragraph (e) of the 40-Hour Week Agreement signed March 19, 1949—effective September 1, 1949). Carrier avers that they have failed to prove either point and that claim should be denied.

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.

Machinists of System Federation No. 73 make this claim on behalf of Machinist Theodore Bjorklund. The Claim is for an additional day's pay for each week from January 7, to May 1, 1950 because claimant worked only four days a week during this period.

With the advent of the 40-Hour Week as of September 1, 1949 carrier, at its St. Paul, Minnesota, Roundhouse, created three regular and one relief machinist's positions. Machinist M. Dunford occupied the first shift, Machinist Ralph Blanck the second shift, claimant the third shift and Machinist H. Hill the regular relief position. These employes were engaged in seven day services. In accordance with the requirements of Rule 27 of the parties' agreement, carrier, by bulletin dated January 3, 1950, abolished the third shift and relief assignment, thus reducing the regular force of machinists at the St. Paul Roundhouse to two positions. Dunford and Blanck, being senior, occupied these two positions and consequently claimant and Hill were laid off. Carrier did not see fit to create a relief position for the rest day of these two positions until May 1, 1950, when it did so.

It is contended claimant was a regularly assigned relief employe during this period and consequently, since the parties' agreement guarantees a five day work week for regular assignments, the same is true as to regular relief positions, citing Decision No. 1 of the Forty-Hour Week Committee in support thereof.

Carrier had a right to and did abolish the regular relief assignment as of January 7, 1950 and claimant was not, during the period from January 7 to May 1, 1950, assigned thereto. The two positions remaining on and after January 7, 1950 being in seven-day services, it left carrier with four days of relief work on the rest days thereof. Rule 1½ (e) of the parties' effective agreement permits, but does not require, carrier to establish a regular relief assignment in six or seven-day services, or combination thereof, when less than five days of relief work exists by assigning such types of other work to the position on other days as may be assigned thereto under the parties' agreement.

Carrier did not see fit to establish a regular relief assignment to perform these four days of relief but had it performed in accordance with the provisions of Rule 1½ (j). This it had a right to do and claimant, being senior to Hill, was properly used by carrier to perform it.

In view of the foregoing it is not necessary to determine if the parties' agreement, as of September 1, 1949, guaranteed a five-day work week for regular assignments.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1954.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1824.

The majority erred in Award No. 1824, for the following reasons:

First, they say the claimant (Bjorklund) and Hill were laid off, effective January 7, 1950: this is in error since both submissions show that the claimant (Bjorklund) worked his regular assignment from 12:00 o'clock midnight until 8:00 A. M., on January 6, 1950 and on January 7, 1950, started working on the relief job from 9:30 P. M. to 6:00 A. M., so he (Bjorklund) was not furloughed. He was assigned to work the four rest days of the two machinists, and since he could not work these four rest days without orders to do so from the carrier's representative, he had to be