

Award No. 1883
Docket No. 1729
2-AT&SF-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Machinists)**

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

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly blanked seven-day positions on the first, second and third shifts at Pueblo, Colorado on the following days each week:

First shift:—Saturday and Sunday

Second shift:—Thursday and Friday

Third shift:—Tuesday and Wednesday

2. That accordingly the Carrier be ordered to properly fill these seven-day positions on the above mentioned days by:

a) Establishing relief positions, or

b) Assigning the regular incumbents on each shift working five days per week namely:

C. A. Klase—	First shift—	Assigned Monday through Friday
W. H. Randolph—	Second shift—	Assigned Saturday through Wednesday
S. Gall—	Third shift—	Assigned Thursday through Monday

to work seven days per week.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed, both prior and subsequent to August 7, 1953, three shifts of machinists at Pueblo, Colorado, and the spread of these shifts consists of eight consecutive hours, including an allowance of twenty minutes for lunch, follows:

a) The hours of the first shift were from 7:30 A. M. to 3:30 P. M.

2. The work week assignments at Pueblo were established strictly in accordance with the controlling agreement rules.
3. There is nothing in the 40-hour week agreement that the establishment of relief positions is a condition precedent to staggering work weeks.
4. There is no requirement under the forty hour week agreement that seven-day positions as such must be filled every day of the week.
5. The machinist positions herein involved were all abolished in January 1954, therefore the employees' statement of claim is now improper and entirely out of order.

In the light of all of the facts and circumstances it is clear that the **claim** in this dispute is not supported by the applicable agreement and is without merit and should be denied in its entirety.

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.

Prior to the effective date of the 40-Hour Week Agreement carrier's roundhouse at Pueblo, Colorado was operated seven days per week, the eleven machinists there employed being regularly assigned Monday through Saturday, with a skeleton crew working on Sunday as an overtime day to handle running repairs on locomotives. When the 40-hour week became effective on September 1, 1949, these machinists were placed on staggered five-day assignments so as to cover service seven days a week.

Due to the advent of diesels on this division, the number of machinists employed at this point was reduced to three, effective August 12, 1953. Machinist Klase was assigned work days Monday through Friday, 7:30 A. M. to 3:30 P. M.; Machinist Randolph Saturday through Wednesday, 3:30 P. M. to 11:30 P. M.; and Machinist Gall Thursday through Monday, 11:30 P. M. to 7:30 A. M. As a result, two machinists were on duty each day of the week except Monday, when each of the three shifts was covered by a machinist.

The question before us is whether the carrier has been properly conducting a seven-day service without covering the rest days of the three cited machinists by either:

- 1) establishing relief positions or
- 2) assigning each of said three machinists to work seven days per week.

Carrier contends that under the controlling agreement and previous awards of this Division it is not obligated to follow either of these courses of action. Organization contends carrier has blanked seven-day positions in violation of the agreement and cites decisions of this Division as exemplified by Award 1444 (Referee Swacker).

The general problem here involved has been considered by many awards of this Division. There has been some conflict in these decisions but we think

it is now well settled that the test as to whether seven-day positions properly exist under the 40-Hour Week Agreement is not whether a particular shift is filled seven days per week. Rather it is whether the operation is and must be conducted seven days per week, which we find to be true in the present case. It is also settled that relief assignments need not be made to provide seven-day coverage on each shift in order to maintain the status of seven-day positions under the controlling agreement. See this Division's Awards 1528 (Referee Parker), 1565 and 1566 (Referee Wenke), and 1644 (Referee Carter).

In view of the foregoing we are constrained to find the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1955.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1883.

The carrier and the majority agree that these positions are seven day positions; they do this in order to get the benefits accruing to seven day positions as provided for in the current agreement.

Rule 1(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.”

Rule 1(i)—“All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days **will be established to do the work necessary on rest days of assignments in six or seven days' service or combinations thereof**, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement: * * *.” (Emphasis supplied.)

Since the agreement makes no provision for blanking any of the seven day positions, the majority erred in ruling that seven day positions could be worked five days instead of seven days per week, thus removing the position from the seven day category and making it a five day position instead of a seven day position.

NOTE under Rule 1 reads as follows:

“The expressions ‘position’ and ‘work’ used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.”

The majority points out the indisputable fact that by this note positions are differentiated from the work week of individual employees. It then proceeds to assume without any foundation whatever that because a position is something different from an individual's work week the term bears no relationship at all to any ordinary concept of “position” and refers only to the type of service required by the carrier.

The majority in order to arrive at the conclusion they did, erroneously tied up the term position, to service required by the carrier and make a

position twenty-four hours wide despite the fact that the basic eight hour day covers all positions in the current agreement.

For the above reasons we dissent from the ruling of the majority in Award No. 1883.

R. W. Blake
C. E. Goodlin
T. E. Losey
E. W. Wiesner
George Wright