

Award No. 3094

Docket No. 2850

2-MP-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the assignments of Carmen George Tauscher and H. R. Muth were improperly changed from a work week of Tuesday through Saturday, rest days Sunday and Monday, to newly created assignments of work week Sunday through Thursday, rest days Friday and Saturday.

2. That accordingly, the Carrier be ordered to:

(a) Restore the aforementioned employes to their former work week of Tuesday through Saturday, rest days Sunday and Monday;

(b) Additionally compensate these employes at the straight time rate for having been deprived of their right to work each Friday and Saturday retroactive to April 8, 1956;

(c) Additionally compensate these employes at overtime rate for services they were required to perform on each Sunday and Monday, retroactive to April 8, 1956.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad, hereinafter referred to as the carrier, maintains a repair track force at Hoisington, Kansas consisting of carmen and helpers who from August 16, 1944 until September 1, 1949 worked only six (6) days per week, i.e., Monday through Saturday. From September 1, 1949, the advent of the 40-hour work week, until April 8, 1956, the repair track worked only six (6) days per week excluding holidays. From August 16, 1944 to April 8, 1956, a period

either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. We cannot subscribe to the view that the meaning of the 40-Hour Week Agreement can anyway be affected by the private knowledge of the party construing it as to its intended meaning. The terms of the written agreement must prevail."

Award 6695 (rendered with the assistance of Referee Leiserson) discussed in the foregoing quotation from the Opinion of the Board in Third Division Award 6856, is one out of more than forty awards rendered by the Adjustment Board in cases involving the same question as here, and the only one taking the unrealistic and grossly erroneous position outlined therein. In other words, of the more than forty awards rendered all but Award 6695 have been completely uniform and consistent in holding that a carrier has the right to stagger its forces to perform operations in a seven-day service under the 40-Hour Week Agreement where it is necessary in the operation of the railroad that it do so. The more than forty awards so holding represent the well-reasoned opinion of seven referees.

For the reasons fully detailed and discussed in this submission, there is no basis for these claims and accordingly they must 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.

The dispute herein is over a conclusion of fact; not over the facts themselves. For 12 years the repair track at Hoisington, Kansas, did not work on Sunday. Then in April, 1956 two jobs were established on the repair track to work Sundays. About one year later the entire repair track operation was closed.

The carrier defends its conclusion to keep the repair track open on Sunday as an operational necessity, by showing delays in inspection of trains caused by insufficient inspector forces, and also delays in repairs to cars because there was no one on duty on Sunday to make the repairs. In addition, it has shown that some repairs were made on Sundays by calling out repairman at punitive rate. Also shown is the result of a study of Sunday operations after the change, to the effect that on the only regular train on the first trick, (No. 61) the delay in inspection was cut 30 minutes by giving the one car inspector the assistance of men from the repair track.

From a study of the Forty hour week agreement and the awards applying it, we are of the opinion that Sunday work per se is not forbidden, but is limited to necessary work which may change from time to time varying with operational requirements.

The word "necessary" is the key to the present dispute. If a repair track crew was necessary on Sunday, the carrier was within its rights in establishing it. The reverse of the proposition is equally true.

The most significant fact before us is that in March 1957, the repair track at Hoisington, Kansas, was closed. This, coupled with the evidence of the number of loads and empties handled and the improved inspection time, leads us to the conclusion that this change in operation was in the nature of an experiment, to improve operating efficiency and reduce costs, both of which are always necessary to successful operations as a whole, but in individual situations may offer alternatives thereby obviating the necessity of a single choice.

Our conclusion of fact is, that "the amount or nature of traffic or business and seasonal fluctuations" has not been shown to be sufficient, to constitute "Sunday work that may be necessary".

AWARD

Claim 1. Sustained.

Claim 2. (a) The question is moot in view of the present fact that the repair track is closed. The claim is dismissed.

(b) Claim sustained.

(c) Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of January, 1959.