

Award No. 5397

Docket No. 5241

2-NP-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That, in violation of the current Agreement, the Carrier changed the hours of service of Carman W. J. Surbur, J. D. Tritt, J. L. Moad, F.W. Edlund, J. H. Hammel, J. T. Lester, Car Oiler G. F. Hill, and Writer-Up-Man J. R. Kaiver from 7:30 A. M. to 4:00 P. M., Monday through Friday, to 7:30 A. M. to 4:00 P. M., Tuesday through Saturday, during the period from March 20, to April 24, 1965, inclusive.

2. That accordingly, the Carrier be ordered to:

(A) Compensate the following employees as follows:

| | |
|------------------------------|-------------------------|
| J. A. Kaiver — Writer-Up-Man | A total of 60 hours pay |
| W. J. Surbur — Carman | A total of 60 hours pay |
| J. D. Tritt — Carman | A total of 60 hours pay |

Four hours pay for performing service on their regular assigned rest day of Saturday on the following Saturdays: March 27, April 3, 10, 17, and 24, 1965. Eight hours pay for being deprived of the right to work on their duly assigned work day of Monday prior to the change of March 22, 1965, for the following Mondays, March 22, 29, April 5, 12, and 19, 1965.

(B) Compensate the following employee:

| | |
|---------------------|-------------------------|
| J. L. Moad — Carman | A total of 24 hours pay |
|---------------------|-------------------------|

Four hours pay for performing service on his regular assigned rest day of Saturday on the following Saturdays: March 27, and April 3, 1965. Eight hours pay for deprived of the right to work on his duly assigned work day of Mon-

day prior to the change of March 22, 1965, for the following Mondays: March 22 and 29, 1965.

(C) Compensate the following employee:

F. W. Edlund — Carman A total of 24 hours pay

Four hours pay for performing service on his regular assigned rest day of Saturday on the following Saturdays: March 10 and 24, 1965. Eight hours pay for being deprived of the right to work on his duly assigned work day of Monday prior to the change of March 22, 1965, for the following Mondays: March 22 and 29, 1965.

(D) Compensate the following employee:

J. H. Hammel — Carman A total of 38¼ hours pay

Two and one-fourth hours pay for service performed on his regular assigned rest day of Saturday, April 10, 1965. Four hours pay for service performed on his regular assigned rest day of Saturday on the following Saturdays: March 27, April 3, and 24, 1965. Eight hours pay for being deprived of the right to work on his duly assigned work day of Monday prior to the change of March 22, 1965, for the following Mondays: March 29, April 5 and 12, 1965.

(E) Compensate the following employee:

J. T. Lester — Carman A total of 16 hours pay

Four hours pay for service performed on his regular assigned rest day of Saturday on the following Saturdays: April 17 and 24, 1965. Eight hours pay for being deprived of the right to work on his duly assigned work day of Monday prior to the change of March 22, 1965 for the following Monday: April 19, 1965.

(F) Compensate the following employee:

G. F. Hill — Car Oiler A total of 40 hours

Four hours pay for service performed on his regular assigned rest day of Saturday on the following Saturdays: April 3, 10, 17 and 24, 1965. Eight hours pay for being deprived of the right to work on his duly assigned work day prior to the change of March 22, 1965, for the following Mondays: April 5, 12, and 19, 1965.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 22, 1965, Carmen W. J. Surber, J. D. Tritt, J. L. Moad, F. W. Edlund, J. H. Hammel, J. T. Lester, Car Oiler G. F. Hill, and Writer-Up-Man J. R. Kaiver, hereinafter referred to as the Claimants, were employed and assigned to a regular work shift of 7:30 A. M. to 4:00 P. M., Monday through Friday by the Northern Pacific Railway Company, hereinafter referred to as the Carrier, at Park-water Car Department, Spokane, Washington.

the claimants are entitled to payment at time and one-half rate. The July 1, 1955 Shop Crafts Agreement contains no rule establishing the method of payment for constructive work weeks and hypothetical rest days. In other words, these claimants did not work in excess of five days per week during the period involved in this claim, and under such circumstances there is no rule in the July 1, 1955 Shop Crafts Agreement that would sustain payment of the hours claimed. Significantly, the Employees in appealing this claim to the Chief of Labor Relations have cited no rule to sustain the monetary claim.

The Carrier has shown that:

1. Service, duties or operations performed by Car Department forces at Parkwater includes repairing cars, which work extended over a period of six days per week, from Monday through Saturday.

2. The Employees do not dispute the fact that service, duties or operations extended over a period of six days per week, from Monday through Saturday.

3. The work weeks of Car Department forces at Parkwater were staggered pursuant to Rule 2(a) of the July 1, 1955 Shop Crafts Agreement — a portion of the Car Department forces being assigned to work from Monday through Friday and a portion of the Car Department forces being assigned to work from Tuesday through Saturday.

4. The July 1, 1955 Shop Crafts Agreement contains no rule establishing a penalty when work weeks are staggered to cover service, duties and operations extending over a period of six days per week, from Monday through Saturday.

5. Rule 2(f) applies only in a deviation from the Monday-through-Friday work week where service, duties or operations extend over a period of five days per week.

The claim covered by this docket should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

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.

Parties to said dispute were given due notice of hearing thereon.

Prior to March 22, 1965, Claimants were employed and assigned to regular work shift of 7:30 A. M. to 4:00 P. M., Monday through Friday, by Carrier at

Parkwater Car Department, Spokane, Washington. On March 10, 1965, Carrier posted a bulletin advertising for 5 Carmen and one Car Oiler to work a shift of Tuesday through Saturday, 7:30 A.M. to 4:00 P.M., with Sunday and Monday as the assigned rest days. This work assignment was put into effect March 20, 1965, and was discontinued after April 24, 1965. Claimants contend a violation of Rule 2, paragraph (f), of the Agreement, which is as follows:

"Deviation from Monday-Friday Week: If in positions or work extending over a period of five days per week, an operational problem arises which the Railway Company contends cannot be met under the provisions of paragraph (b) of this rule, and requires that some of such employes work Tuesday through Saturday instead of Monday through Friday, such assignments may be agreed upon by the Railway Company and General Chairman of the organization involved. If the parties fail to agree thereon and the Railway Company fail to agree thereon and the Railway Company nevertheless puts such assignments into effect the dispute may be precessed as a grievance or claim."

Carrier contends that the operational requirements extended over a period of six days per week, from Monday through Saturday, and, therefore, it staggered the work week. Carrier also contends that Rule 2, paragraph (f), of the Agreement is not applicable, but that Rule 2, paragraph (a), covers the question involved in this dispute. Rule 2, paragraph (a), is as follows:

"(a) General: The work week for all employes, subject to the exceptions contained in this agreement, shall be forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the work weeks may be staggered in accordance with the Railway Company's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this agreement."

In connection with their contention, the Claimants are making claim for Monday of each week, which was a regularly assigned work day of their work week of which they were deprived and are also making claim for time and a half rate of pay for working on Saturdays, which was their regularly assigned rest day at the rate of one and a half basis in accordance with Rule 7(a) of the Agreement.

This Board will follow Award 2722. This Board finds that Carrier originally decided and set up the five day operations in both work and service, Monday through Fridays, in 1949. This Board further finds that the Carrier arbitrarily and unilaterally abolished eight positions, Monday through Friday, and advertised these eight positions by bulletin for work days of Tuesdays through Saturdays. This Board further finds that the language of Rule 2(a) supra, in its last sentence, states: "The foregoing work week rule is subject to the provisions of this Agreement." This was a definite deviation from Monday-Friday work week and requires a conference between the Carrier and General Chairman of the organization involved. The record is void as to any evidence of such conference required by Rule 2(f) of the Agreement.

The fact that the change in assignments from the Monday through Friday schedule had a duration for only a period of one month, is a strong indication to this Board that a permanent staggered work week was not necessary for Carrier's operational requirements. This fact alone served as strong probative

evidence that Rule 2, paragraph (f), of the Agreement should have been followed by the Carrier.

As stated in Award 2722, "As a practical matter, the carrier in most instances can reasonably be expected to be responsible for proposing the anticipated changes. The limitation of the rule does not permit the carrier to by-pass the committee without attempting to reach an agreement by mutual understanding. Neither is the carrier justified in concluding, without such effort, that actual service requirements nullify the mandatory provisions of the rule."

Accordingly, this claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1968.