



Award No. 5736

Docket No. 5603

2-SOO-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 66, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (CARMEN)**

SOO LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman Oscar G. Munson was denied eight (8) hours' holiday pay for Labor Day, September 6, 1965.
2. That accordingly, the Carrier be ordered to pay the aforesaid employe eight (8) hours' holiday pay for the above mentioned date.

EMPLOYEES' STATEMENT OF FACTS: Carman Oscar G. Munson, hereinafter referred to as the Claimant, is employed in his respective craft and class by the Soo Line Railroad Company, hereinafter referred to as the Carrier, in its Mechanical Department facilities located at Superior, Wisconsin. Claimant held a vacation relief assignment which provided that when not covering vacations he would work on the Belknap Repair Track, 7:30 A.M. to 4:00 P.M., Monday through Friday with Saturday and Sunday rest days.

The week preceding Monday, September 6, 1965, the date of the violation, the Claimant was working on the Belknap Repair Track. He worked Monday through Friday, taking rest days of Saturday and Sunday; the rest days of his assignment when working on the Repair Track. During this week that he was working on the Repair Track he received notice that he was to cover a vacation assignment with Sunday and Monday rest days. Claimant worked the vacation relief position for a two-week period—September 7th through the 18th—took Sunday, September 19th as a rest day and returned to his assignment on the Repair Track Monday, September 20th.

September 6, 1965, Labor day, is a National Holiday under the terms of the current agreement. Claimant submitted a time slip for eight hours holiday pay for this date which was denied by the Carrier.

relief assignments. It was obvious that there would be weeks when no vacations were scheduled, and it was patent that with round-the-clock assignments, vacation relief could not be confined to the same work days each week. In recognition of these facts it was agreed that the work week for the incumbents of such positions would be a period of seven (7) consecutive days starting with Monday, and that in any work week in which there was less than five days' vacation relief, the shortage would be made up in days on the Belknap repair track. Examination of Carrier's Exhibits A, B, C, and D clearly shows that in each of the weeks commencing Monday, September 6, 1965, through Sunday, October 3, 1965, claimant was furnished five days' work. To this he was entitled, but nothing more.

In the handling of this dispute on the property, the Employees argued that the purpose of bidding in these vacation relief assignments was to gain additional days of work. This may have been claimant's purpose, but, if so, it was an ill-founded one. It was most assuredly not the purpose and intent of the arrangement jointly designed. Regular vacation relief assignments were created to correct scheduling complaints and forced or involuntary vacation relief service.

The Employees also argued that an employee could not be required to observe the rest days of an assignment in advance of the start of the work week.

This assignment carries no guarantee of work on any specific days. The bulletin merely states that Carrier will provide five working days during the Monday to Sunday work week.

The Employees also argued that these assignments had not, in practice, been required to observe rest days of an assignment in advance of first commencing work thereon.

While contending that such practices, even if true, were irrelevant in view of the clear language of the bulletin, Carrier disproved Employees' statement by producing work week schedules showing that it was not unusual for these positions to work other than a Monday-Friday work week. Typical of these records are Carrier's Exhibits E and F attached. These schedules show that for the period Monday, August 31, 1964, through Sunday, September 13, 1964, Carman R. Okerman (previous occupant of Assignment #101) worked in relief of one employee Monday through Friday one week, and in relief of another, Tuesday through Saturday the following week.

This claim is not supported by schedule rule, bulletin, Board Award, or past practice. It is completely without merit, and Carrier respectfully prays that it be denied accordingly.

All data submitted in support of Carrier's position has been presented to the Organization's representative and 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 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.

Parties to said dispute waived right of appearance at hearing thereon.

The pivotal issue in this dispute is what are the work days in the work week of Claimant's regular assignment.

In March 1965 Claimant was the successful bidder assigned to one of two positions bulletined as follows:

"ONE CARMAN, Comb. #101, regular vacation relief assignment with Monday to Sunday work week, work days and rest days of position to which assigned for vacation relief. This position will be assigned sufficient days on Belknap repair track 7:30 A.M. to 4:30 P.M. (30' lunch period) to provide 5 working days in its assigned work week Monday to Sunday, when there is insufficient vacation relief work. Rate, that of position to which assigned."

In the years immediately preceding the establishment of the positions vacation vacancies had been protected, when necessary, by recalling furloughed Carman or forcing junior Carman from the Car Shop into yard assignments. There was dissatisfaction. The parties discussed it and reached an understanding that Carrier would establish two regular vacation relief positions. The parties, in their respective Submissions, agree that each of them recognized that: (1) the positions could not be maintained year-around solely for vacation relief purposes; (2) there would have to be an assurance of full time employment or there would be no hope of filling the positions by bid; and (3) in view of the staggered work week of transportation yard employes the positions could not be bound to the same five consecutive work days in a work week.

In the work week of Claimant's position—Monday to Sunday—preceding Monday, September 6, 1965, Claimant worked Monday through Friday at Belknap repair tracks with Saturday and Sunday rest days. In Claimant's following work week, beginning on Monday, September 6, he was assigned to work vacation relief on a position with work days Tuesday through Saturday. He did not work Monday, September 6. That day and the following Sunday were rest days of the position on which he relieved.

Carman contends that: (1) Monday, September 6, was a work day of Claimant's Monday to Sunday work week; (2) Claimant did not assume the work days and rest days of the position on which he relieved until the first day he worked it—Tuesday, September 7. In support it cites Rule 1-A(i) which reads in pertinent part:

"The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work,"

and, Award No. 4097.

Carrier contends that: (1) Claimant's regular assignment, as bulletined, was to fill vacation relief assignments; (2) Claimant had no work days certain during his Monday through Sunday work week—only a guarantee of 5 days

of work during his work week to be filled in by work on Belknap repair track when the guarantee was not satisfied in vacation relief work; (3) Carman has not, at anytime, alleged that the bulletined duties of Claimant's position violates any provision of the Agreement; and (4) when Claimant moved from vacation relief work to Belknap or Belknap to vacation relief he was fulfilling the duties of his regular assignment and not moving from his regular assignment to another as was the case in Award No. 4097.

The bulletined description of Claimant's position prescribes with certainty: (1) the work week Monday through Sunday; (2) the minimum number of work days, not the days, in the work week: 5; (3) rest days and work days only when working as vacation relief: those of the particular position; and, (4) hours of work when Claimant works at Belknap repair tracks. Other than these contractual defined conditions, the work days, rest days and hours of Claimant's work week are left variable; and, Claimant cannot be heard to complain when in any of his work weeks he has a minimum of 5 work days. If because of being shifted between vacation relief and Belknap Claimant would be required to work more than 5 days in his work week—Monday through Sunday—the 40 Hour Week provisions would be applicable.

Carman's arguments are predicated upon a premise that Claimant is regularly assigned to work at Belknap repair track and that when he is assigned to vacation relief he is moving from his regular assignment to another assignment. This is a false premise. Claimant's regular assignment, shown by the bulletined duties of his position, is "regular vacation relief." His employment at Belknap is incidental—conditioned upon there not being need for his services in regular vacation relief for 5 days of work in his work week.

Rule 1-A(i) *supra*, speaks of "the first day on which the assignment is bulletined to work. "The bulletin establishing Claimant's position does not appoint a first day of work in the work week." The Rule is not applicable in the instant dispute.

In Award No. 4097 the claimant moved from a regular assignment to another regular assignment. This was not done in the instant case. Claimant in working vacation relief was working his regular assignment. We find Award No. 4097, inapposite in the resolution of the issue presented herein.

For the foregoing reasons we find that Monday, September 6, 1965, was not a work day of Claimant's work week of September 6-12, 1965. We, therefore, will deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.

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