

Award No. 6111
Docket No. 5957
2-GM&O-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly assigned the 3rd shift Car Inspector's position at Jackson, Mississippi to a six-day operation, Sunday through Friday.

2. That accordingly, the Carrier be ordered to make Car Inspector C. J. Ming whole by additionally compensating him as follows:

- (a) Four hours at straight time rate for each Sunday worked to complete the time and one-half rate, retroactive to April 25, 1969 and continuing until proper assignment is made.
- (b) Eight hours at the straight time rate for each Tuesday for being deprived of working on those days, retroactive to April 25, 1969 and continuing until proper assignment is made.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier, operates a train yard at Jackson, Mississippi, where, effective April 25, 1969, it has car inspectors assigned on a 7-day week on the first, a 7-day week on the second shift, and a 6-day week on the third shift. The third shift position is blanked on Saturday.

Bulletin making the assignment was dated and posted April 25, 1969. It reads as follows:

“ * * * * *

BULLETIN NO. 4
Jackson, Mississippi
April 25, 1969

All Carman - Jackson, Mississippi:

April	4	2
	11	3
	18	3
	25	4
May	2	3 Call
	9	4½ Call
	16	2¾ Call
	23	None
	30	None

(Where "Call" is shown, a carman was called off the overtime board; where nothing shown, the second shift car inspector was held over).

Carrier's operational requirements are not such that the car inspector's position on the third shift could be blanked on Sunday night and work the car inspector on the third shift on Saturday, thus giving the relief car inspector Sunday as a rest day — which is really the reason that this claim is before this Board.

CONCLUSION

(1) There is no claim or contention before this Board that the regular assigned positions at Jackson, Mississippi are improper. Therefore, this Board can only conclude that such assignments are in accord with the agreement.

(2) The only claim before this Board is that the regular relief assignment should not work on Sunday, and that the claimant should work on Tuesday. The facts are that the third trick position on Tuesday is occupied by a regularly assigned employe.

(3) The relief assignment at Jackson, Mississippi has rest days of Monday and Tuesday. Paragraph (F) of Rule 1, supra, does not require that the rest days of a regular relief assignment must be Sunday and Monday.

(4) The claim is not supported by the agreement or past practice, and 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.

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

This is a claim that Car Inspector C. J. Ming, employed in a relief capacity, was improperly assigned Monday and Tuesday as days off. The relief

sought is payment for one-half day's pay for each Sunday worked and for one day's pay for each Tuesday not worked, such payments to be made retroactive to April 25, 1969.

The work schedule below details the assignment at Jackson, Mississippi of regular relief man, C. J. Ming.

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
7AM-3PM	Morris	Morris	(Relief) Ming	(Relief) Ming	Morris	Morris	Morris
3PM-11PM	Wilson	Wilson	Wilson	Wilson	(Relief) Ming	(Relief) Ming	Wilson
11PM-7AM	Shirly	Shirly	Shirly	Shirly	Shirly		(Relief) Ming

It is clear from the above schedule that all four Car Inspectors at Jackson work a 40 hour week, that all have consecutive days off, and, finally, that Ming, the grievant, is a relief man, relieving Morris on Wednesdays and Thursdays (7 A. M. to 3 P. M.), relieving Wilson on Fridays and Saturdays (3 P. M. to 11 P. M.), and, finally, relieving Shirly on Sunday from 11 P. M. to 7 A. M.

When work needs to be performed on the third shift on Saturday night, it is usually for not less than three, or for more than five, hours, and it is performed either by holding over the second shift employe, who is the grievant, or calling another employe to work from the Overtime Board.

Article II, Section 1-(e), and 2-1-(g) of the March 19, 1949 Agreement are clearly controlling in the instant grievance.

Article II, Section 1-(e), provides:

"(e) Regular Relief Assignments. All possible regular relief assignments with 5 days work and two consecutive rest days will be established to do the work necessary on rest days of assignments in 6 or 7 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 in the individual agreements. When no guarantee rule now exists, such relief assignments will not be required to have 5 days' work per week. Assignments for regular relief positions may on different days include different starting times, duties and work locations from employes of the same class and the seniority district, provided they take the starting time, duties and work location of the employe or employes whom they are relieving."

Carrier discharged its obligations under Article II, Section (a), (c), (d), to establish consecutive days off to the Car Inspectors having Regular Assignments, i.e., Carmen Morris, Wilson and Shirly. Carrier then created a Relief Assignment, the design of which is challenged here by the organization.

The challenge of the organization of the design of grievant Ming's assignment misses its mark, first, by ignoring the fact that the assignment complained of is in fact a Relief Assignment, and, second, by asserting erro-

neously that Ming has a "6 day position" which has been dealt with improperly by the Carrier.

The Board finds that the grievant's work assignment is in fact a Relief Assignment and further finds that the Carrier has in fact satisfied all the conditions set forth in Article II, Section 1-(e), which, it is noted, specifically authorizes the establishment of Relief Assignments "to do the work necessary on rest days in assignments of 6 or 7 days' service or combinations thereof." The Board particularly notes that (e) only specifies consecutive days off for a relief assignment, and in no way specifies particular calendar days as days off, or as days to be favored as days off, as do paragraphs in Article II, Section 1-(a), (b), (c) and (d) — all of which, of course, deal with Regular Assignments.

It is abundantly clear that the rules in Article II not only establish guidelines, but, in addition, provide within its structure and by the arrangement and sequence of its Sections, for a sequential application of its terms. Thus, Article II deals with Regular Assignments first; it then deals with specific problems affecting Regular Assignments; it then in (e) deals with Relief Assignments, and then in (g) deals with consecutiveness of days off, which is again reiterated as a basic objective to be strived for, and provides finally for non-consecutive days off. In (g), both 5 and 6 each begin respectively with the phrase:

"5 - If the foregoing does not solve . . .

6 - If after all the foregoing has been done there still remains . . ."

Thus the Board finds that: 1) the very language contained in (e), 2) the specific title given to (e), namely, "Regular Relief Assignments," 3) the actual language used in (g)-5, 6, and 7, when added to the very sequence and arrangement of the guidelines in Article II, establish beyond question, that Article II of the Agreement meant to and does in fact, provide for specific treatment for Regular Assignments as distinct from Relief Assignments.

Furthermore, the Board takes particular note of Article II, Section 1-(g)-7, which is quoted as follows:

"7 - The least desirable solution of the problem would be to work some regular employees on the 6th or 7th days at overtime rates and thus withhold work from additional relief men."

Article II, Section 1-(g)-7, is unique in that it is the only paragraph in which a value judgment, as distinct from a guideline, is expressed. The Board cannot and should not, nor should the parties to this Agreement, ignore the opprobrium placed on a practice providing overtime to regulars and thereby denying work to Relief Men. The parties clearly intended that Relief Men's work opportunities should not suffer because of the overtime of Regulars.

The organization places great stress on Article II, Section 1-(c), in arguing its claim on behalf of grievant Ming. But, Article II, Section 1-(c), has no application to this grievant. It does have application to Shirley. However, Shirley, the regularly assigned third shift Car Inspector, has Saturday and Sunday off and thus Carrier is in compliance with Article II, Section 1-(c).

Carrier having complied with the requirements of the Agreement with respect to Shirley still, nonetheless, was in need of a Car Inspector on Sunday night, and had assigned Ming. Apparently, as noted previously, there is work to perform on Saturday night after 11 P.M. and Carrier has been using employees on overtime to do that work. This is not on its face violative of the Agreement, and it is not a cause for complaint or contention that such overtime is violative of the agreement.

The Board finds that citation in Employees' Ex Parte Brief of Award 1444 is not pertinent to the issues raised in this case.

Finally, the Board notes that the organization's basic contention rests on a misconstruance and misapplication of Article II, Section 1, to wit:

“. . . The third shift position is improperly assigned to a six day operation to work Sunday through Friday rather than Monday through Saturday.”

(See Organization's Rebuttal Brief, page 8.)

The Board in denying the instant grievance finds that in fact the third shift assignment, Shirley's, consists of Monday to Friday with Saturday and Sunday off, and further finds that such assignment is in accord with the Agreement. The Board further finds no bar in the Agreement to Carrier's assignment of Ming on Sunday to fill in on the third shift. Finally, the Board finds that the organization's use of the phrase "6 day operation", in the above quoted citation from their Brief, is an erroneous reference to Article II, Section 1, (a), (b), (c) and (d), which speaks of 5 and 6 and 7 day positions, and by that language merely intending to provide where there is particular work to be performed, 5 or 6 or 7 days, the various levels of preference that are to be accorded to particular calendar days-off of the Regularly Assigned employees.

The Organization has, first, misconstrued the above language as being applicable to Relief Assignments; secondly, it has further misconstrued it by defining the third shift as a "six day position" as applied to Ming, and thus it argues that Ming's assignment must be governed by the Article II, Section 1-(c), which requires rest days of Saturday or Sunday, or Sunday and Monday. This argument is erroneous, not only because it treats Ming as if he had a Regular Assignment, which he does not, but also treats him as if there was in existence a concrete, defined "six-day position" to which Ming is attached or related, or to which he ought to be attached or related in some manner. Such a view of Article II does violence both to its clear intent and language, and particularly so with respect to "Note to Article II, quoted as follows:

"NOTE: The expressions 'positions' and 'work' used in this Article II 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."

(Emphasis ours.)

The Board sees no purpose in construing Article II, Section 1-(a), (b), (c), (d), beyond stating that these portions of Article II, Section 1, are not applicable or controlling with respect to the grievant and are confined in their

application to employes holding Regular Assignments as distinct from employes holding Relief Assignments which, as has been noted, are dealt with in paragraphs (e) and (g) of Article II, Section 1, which Carrier has not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.