Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. **7041**
SECONI DIVISION Docket No. 6709
2-T&P-CM-'76

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employes' Department, A. F. of L. - C. I. O. Carmen
(The Texas and Pacific Railway Company

Dispute: Claim of Employes:

1. That, in violation of the current Agreement, the Carrier changed the hours of service of Carman T. H. Cox and A. M. Espinoza from 4:00 PM to 11:30 PM Monday through Friday, to 4:00 PM to 12:00, Tuesday through Saturday, beginning October 6, 1972 and currently still in effect.

2. That accordingly, the Carrier be ordered to additionally compensate Carman T. H. Cox and A. M. Espinoza, four hours pay for performing service on their regular assigned rest day of Saturday beginning November 25, 1972 and eight hours' pay for being deprived of the right to work on their duly assigned work day of Monday prior to the change of October 6, 1972, beginning November 27, 1972 and continuing until this dispute is settled and positions are changed back to rest days of Saturday and Sunday.

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.

Effective October 6, 1972 Carrier changed by bulletin the two second shift Carmen jobs at the Arlington, Texas Auto Department of General Motors Corporation. The record shows that two (2) carmen jobs are worked two (2) shifts five (5) days each week to make repairs to tri-levels cars being used to load automobiles. For an undetermined time before October 6, 1972 the shifts had been, respectively, 7:00 AM to 3:00 PM and 4 PM to midnight, Monday through Friday with rest days of Saturday and Sunday. By the bulletin dated September 29, 1972 Carrier abolished the second shift positions and rebulletined these

positions effective October 6, 1972 with the same hours but with work days Tuesday through Saturday, rest days Sunday and Monday. Thus, as we understand the factual record the work week was staggered so that the first shift worked Monday through Friday, rest days Saturday and Sunday and the second shift worked Tuesday through Saturday, rest days Sunday and Monday. The instant claim alleges that the Agreement was violated relative to the second shift carmen because their rest days were changed and no relief was provided on the Saturdays and Mondays when they were required to work. It is noted for the record that the second shift was reverted to a Monday-Friday work week on or about April 10, 1974.

Analysis of the controlling Agreement and the many conflicting Awards cited by each of the parties shows that the crucial issues in this case are whether "operational requirements" existed to justify staggered work weeks and whether the "positions" and "work" involved herein were five-day or six-day positions. Numerous Awards suggest that if the positions are 5-day positions and thus within the ambit of Rule 1 (b) then a sustaining Award would be warranted in this case. On the other hand, if "operational requirements" and "operational problems" are involved in the instant case, as those terms are set forth in Rule 1 (a) (c) and (f) the Carrier may avoid a finding of contract violation. The problem in this case is to reconcile the apparently conflicting Awards in the particular factual context presented by the instant record.

As we read this record, the factual situation involved long-standing 5-day positions which both by the express language of Rules 1 (a) and (c) were assigned Saturday and Sunday as days off. But the record also persuasively shows that "operational requirements" i.e. the needs of the customer (General Motors) for better utilization of tri-levels, created a situation which would fit the definition of "operational problem" set forth in Rule 1 (f), viz.:

> "(f) Deviation from Monday-Friday Week:
> If in positions or work extending over a period of five (5) days per week, an operational problem arises which the Carrier contends cannot be met under the provisions of this Section 2, paragraph (b), above, and requires that some of such employes work Tuesday to Saturday instead of Monday to Friday, and the employes contend to the contrary, and if the parties fail to agree thereon, then if the Carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the rules agreements."

In our considered judgment this is precisely the type situation to which Rule 1 (f) is directed. That latter provision contemplates that where Carrier contends an "operational problem" exists which cannot be met reasonably with 5-day positions Monday through Friday, it should seek Agreement of the employes before requiring some of the employes to work Tuesday to Saturday. Failing such agreement Carrier may nevertheless put such assignments into effect and the employees may grieve. It is patent that in the face of such a grievance Carrier's contention of "operational problem" may be put to the

test and that determination of a vio. tion, if any, would turn on the merits of Carrier's contention. See Award 6208. But it is likewise obvious to us that a condition precedent to Carrier putting such assignments unilaterally into effect is an attempt first to reach Agreement with the employes. Failure or neglect to confer and attempt to agree thereon obviates any question concerning the merits of Carriers contentions of operational necessity. Further, such failure or neglect to seek such agreement is the basis for an independent grievance irrespective of the validity or existence of the operational problem. Thus, Carrier disregards the requirements of Rule 1 (f) at its peril. See Awards 2722 and 5397.

We are persuaded on the record before us that Carrier did not seek agreement to the change from Monday to Friday to a Tuesday through Friday week before putting such assignments, into effect. For this reason, we find that Carrier violated Rule 1 (f) of the Agreement. In so holding we do not reach the merits of Carrier's contention that operational problems and requirements necessitated such a change and indicate no view thereon. By failing to comply with the express requirements of Rule 1 (f) Carrier effectively has placed that issue beyond our reach on this record. We have no alternative but to sustain the claim.

In the facts of this case we see no justification for the claim of eight (8) hours pay for each Monday during the claim period on which Claimant's enjoyed their rest day. Accordingly, in sustaining the claim we do so only to the extent of four (4) hours pay for performing service on their regularly assigned rest day of Saturday beginning November 25, 1972 and continuing until April 10, 1974.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1976.