

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: { International Association of Machinists
{ and Aerospace Workers
{ Texas Pacific-Missouri Pacific Terminal
{ Railroad of New Orleans .

Dispute: Claim of Employees:

1. That the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans violated the controlling Agreement, in particular Rule 1, by improperly rebulletining positions contrary to the Rule, resulting in claims commencing February 23, 1974. Rule 1, as follows:

"RULE 1

Hours of Service, 40-Hour Week, Rest Day, Etc.

NOTE: The expression 'positions' and 'work 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 employes.

(a) General:

The Carriers will establish effective September 1, 1949, for all employes, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carriers' 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 the Chicago Agreement of March 19, 1949.

(b) Five-Day Positions:

On positions the duties of which can reasonably be met on five days, the days off will be Saturday and Sunday.

(c) Six-Day Positions:

Where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday, or Sunday and Monday.

"(d) Seven-Day Positions:

On positions which have been filled seven days per week, any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

(e) Regular Relief Assignments:

All possible relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day 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 under this agreement.

Assignments for regular relief positions may, on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees they are relieving.

The regular relief positions created under this paragraph (e) shall be bulletined and shall be paid the rates applicable to the position on which relief service is performed. If relief positions include relief service on two positions on one day, the straight time rate of each position shall be paid, but this does not contemplate working a relief employee through two consecutive shifts.

(e-1) Rest Day Relief Travel Time:

Employees regularly assigned to rest day relief service who are required to travel as a part of their assignment shall be paid travel time as hereinafter provided:

(e-2) The carrier shall designate a headquarters point for each relief assignment, which shall be changed only after ten (10) days written notice to the employee affected.

(e-3) If the time consumed in actual travel, including time en route, from the headquarters point to the work location, together with necessary time spent waiting for the employee's shift to start, exceeds one hour and thirty minutes, or if on completion of his shift necessary time spent waiting for transportation plus the time of travel, including waiting time en route, necessary to return to his headquarters point or to the next work location exceeds one hour and thirty minutes, then the excess every one hour and thirty minutes in each case shall be paid for as working time at the straight time rate of the job to which traveled.

"(e-4) Where an employe is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the Carrier will either provide transportation without charge or reimburse the employe for such transportation cost.

('Transportation' means travel by rail, bus, or private automobile and 'transportation cost' means the established passenger fare or automobile mileage allowance where automobile is used.)

(e-5) When such employes are unable to return to their headquarters on any day they shall be entitled, in addition to the allowances under paragraphs (e-3) and (e-4) of this Rule, to reimbursement for actual necessary cost of lodging and two meals per day while away from headquarters, with a maximum of \$4.00 per day, i.e., the 24-hour period following the time when the employe's last shift began-- but on such days they shall not be paid for any hours after their assigned hours unless actually working, or traveling to another work location. Accommodations on a sleeper may be furnished in lieu of the lodging above provided for any time spent on the sleeper will not be considered travel time.

(e-6) An employe who performs rest day relief service on an assignment covered by other travel time rules in this Agreement will be covered by such Rules while on duty in place of the relieved employe, but his travel to and from the headquarters of the relieved employe will be subject to this Rule.

(e-7) The Carrier will make such relief assignments so as to have, consistent with the requirements of the service and other provisions of this Agreement, a minimum amount of travel and time away from home for the employes involved, and at the request of the General Chairman, the Carrier's representatives will meet to discuss questions that may be raised as to such assignments.

(e-8) It is understood that this Rule applies only to regular rest day relief assignments and does not change or modify the application of other travel time rules in this Agreement.

The reference to 'private automobile' and 'automobile mileage allowance' in Rule 1 does not mean that an employe may be required to own or furnish an automobile to qualify for one of these traveling relief positions.

Where arrangements are made with employe to use his automobile in traveling from one point to another on a traveling relief position, he shall be paid an allowance of 7 cents per mile for the use of his car.

(f) 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 Carriers contend cannot be met under the provisions of Rule 1, Paragraph (b) above, and requires that some of such employes work Tuesday to Saturday, instead of Monday to Friday, and the employes contend the contrary and if the parties fail to agree thereon, then if the Carriers nevertheless put such assignments into effect, the dispute may be processed as a grievance or claim under this agreement.

(g) Nonconsecutive Rest Days

The typical work week is to be one with two consecutive days off, and it is the Carrier's obligation to grant this. Therefore, when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by Paragraphs (c), (d) and (e), the following procedure shall be used:

1. All possible regular relief positions shall be established pursuant to Rule 1, Paragraph (e).
2. Possible use of rest days other than Saturday and Sunday, by agreement or in accordance with other provisions of this Rule 1.
3. Efforts will be made by the parties to agree on the accumulation of rest time and the granting of longer consecutive rest periods.
4. Other suitable or practicable plans which may be suggested by either of the parties shall be considered and effort made to come to an agreement thereon.
5. If the foregoing does not solve the problem, then some of the relief men may be given nonconsecutive rest days.
6. If after all the foregoing has been done there still remains service which can only be performed by requiring employes to work in excess of five days per week, the number of regular assignments necessary to avoid this may be made with two nonconsecutive days off.
7. The least desirable solution of the problem would be to work some regular employes on the sixth or seventh days at overtime rates and thus withhold work from additional relief men.

"8. If the parties are in disagreement over the necessity of splitting the rest days on any such assignments, the Carrier may nevertheless put the assignments into effect subject to the right of employees to process the dispute as a grievance or claim under this agreement, and in such proceedings the burden will be on the Carrier to prove that its operational requirements would be impaired if it did not split the rest days in question and that this could be avoided only by working certain employees in excess of five days per week.

(h) Rest Days of Furloughed Employees:

To the extent furloughed men may be utilized under this agreement, their days off need not be consecutive; however, if they take the assignment of a regular employe they will have as their days off the regular days off of that assignment.

(i) The term 'work week' for regular assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven consecutive days starting with Monday.

(j) Sunday Work:

Existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

(k) Bulletin Rule:

Regular assignments reduced to a five day basis under this Rule shall not be considered new jobs under bulletin rules and employes will not be permitted to exercise displacement privileges as a result of such reductions. However, employes will be notified of their assigned rest days by the posting of notice or otherwise.

(l) The rest days on all regular and relief positions shall be assigned and the employes shall be notified. The rest days shall be the same of each week but may be changed to meet service requirements by giving not less than five (5) days written notice to employes affected.

(m) Guarantees:

Except to the extent that the coverage of existing guarantees was extended to certain employes covered by Article II, Section 1 (e) of the March 19, 1949 Agreement, the adoption of the 'shorter work week' rule in Article II, Section 1, of that agreement did not create a guarantee of any number of hours or days of work." (Emphasis supplied)

2. That in restitution, the Texas Pacific - Missouri Pacific Terminal Railroad of New Orleans be ordered to reimburse the following Machinists at the applicable punitive rate of pay for eight (8) hours each day on the respective dates given:

F. J. Rodriguez.....	February 23, 1974
J. D. Rafferty.....	February 24, 1974
A. J. Cornibe.....	March 1, 1974
E. G. Rivero.....	March 2, 1974
L. Lang.....	March 2, 1974
E. W. Camardelle.....	March 3, 1974
F. G. Albrecht.....	March 3, 1974
S. D. Smith.....	March 9, 10, 16, 17, 23 and 24, 1974

For work entitlement they were justly due and denied by the Carrier under the controlling Agreement that being the Consolidated Shop Crafts Agreement effective August 1, 1969. Specifying the assignments as per Exhibit 'Q'.

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 employees assert that Carrier blanked a Machinist seven (7) day swing shift relief position, for the purpose of filling a General Foreman's job. It is the employees' contention that said action demonstrated a lack of a need for such a position, to the point that a rebulletin of a 5-day position (with Saturday and Sunday rest days) was mandated.

Although Carrier subsequently rebulletined in a manner acceptable to the employees, the Organization denies that said action makes moot a consideration of the period of time during which the asserted violation continued.

In Carrier's defense of its action, it points out that it did not take steps which warrant a conclusion that five (5) day positions were mandatory, and it asserted, on the property, that during the applicable period, service was protected by at least one Machinist per shift, seven days per week.

Certainly, the Agreement speaks to concepts of manning and rest days, but in our extensive review of this lengthy docket we do not find that a blanking of one seven-day position results in an automatic requirement of redesignation of all positions in the manner suggested by the employees. Nor are we able to find a showing that Carrier's action was other than that required to protect the required service.

We do not note any Awards which support the contentions advanced by the employees, and accordingly, we dismiss the claim for failure of proof.

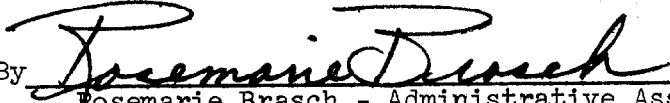
A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of October, 1976.

