

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Norfolk and Western Railway Company
(formerly The New York, Chicago & St. Louis Railroad Company)

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated Rules 2 (b) and 2 (f) and associated Rules of the controlling Agreement dated October 1, 1952, when it posted Award No. 8 dated February 19, 1981, creating Job No. 132 and 133, effective February 25, 1981, at Buffalo Junction, Buffalo, New York.
2. That the Norfolk and Western Railway Company be ordered to compensate Carmen M. Durski for eight (8) hours at the time and one-half rate applicable to Carmen for March 1, 1981; G. Lynch for eight (8) hours at the time and one-half rate applicable to Carmen for March 8, 15, 1981; F. Adamczyk for eight (8) hours at the time and one-half rate applicable to Carmen for each Sunday worked beginning with March 8, 1981, and continuing until corrected; A. Kelley for eight (8) hours at the time and one-half rate applicable to Carmen for each Sunday worked beginning with April 5, 1981, and continuing until corrected; and all future assignees and awardees for eight (8) hours at the time and one-half rate for each Sunday worked.

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 employes 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.

Rules 2 (b) and 2 (f) cited by the Brotherhood in support of the claim are as follows:

"(b) Five-Day Positions

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

". . .

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

It is noted the claim is made not only on behalf of certain named individual employees but also unnamed "carmen for each Sunday worked beginning with March 8, 1981, and continuing until corrected" and also "all future assignees and awardees for eight (8) hours at the time and one-half rate for each Sunday worked."

It is well established that claims for unnamed employees are barred procedurally from consideration as set forth in Award 1439 of the Fourth Division as follows:

"all claims for grievances must be in writing and specifically name the individual or individuals who have been aggrieved."

While the above-stated principle debars the part of the present claim for unnamed individuals it does not address the substance of the claim which is discussed below.

The claim concerns carmen employed at Buffalo Junction which is located 1.8 miles from Carrier's Buffalo Terminal facility. Whereas the Brotherhood states the work usually performed at Buffalo Junction is a repair track applying floor planks to freight cars, the Carrier states the work performed by Carmen is broader in scope, i.e., "Carmen at Buffalo Junction perform program work on certain cars and do other carmen's work on demand." The Carrier contends the changed assignments set forth in Award No. 8 were necessary due to operational requirements.

Prior to effecting the changes in job assignments under Award No. 8, the Carrier's General Foreman met with the Local Chairman of the Brotherhood and a committeeman on February 12, 1981 to discuss the proposed changes. In the meeting the Carrier representative set forth the reason for the proposed changes as follows:

"in addition to the flooring of flat cars, the positions were needed on Sundays to work cars set off from road trains, inspect empty piggyback and tri-level cars from the piggyback ramp, to perform other duties of the carmen's craft as necessary, and to cut down on the overtime that was being required as a result of not having such assignments."

In meeting with the Brotherhood representatives over the proposed changes the Carrier did not contend it had an operational problem as contemplated by Rule 2 (f). Instead the Carrier proposed the changes in assignments because of work needs as specified above.

The National Agreement of September 1, 1949, establishing the 40 hour work week contemplated five work days of eight hours each with two consecutive days off and specified that "work weeks may be staggered in accordance with carrier's operational requirements. The Agreement also specified that "so far as practicable the days off shall be Saturday and Sunday." The provisions of Rule 2 (f) do not preclude Carrier from changing assignments and contemplates that operational needs may arise which necessitate changing rest days from the preferred Saturdays and Sundays to other days of the week.

The Carrier set forth specific needs in defense of the proposed changes in the assignments covered by the claim. The Brotherhood, on the other hand, did not support its claim, with evidence but, instead, relied on disputing Carrier contentions as to the operational requirements which formed the basis of the changes in assignments. The inspection reports, included as a part of the Brotherhood's Submission, do not contain supportive evidence on the claim.

The Brotherhood relies heavily on Award 8289 in support of its claim. Examination of that award, however, shows it arose out of Carrier establishing a seven-day operation, a situation which does not apply in this case. The record shows that prior to Award No. 8 there was a seven-day operation at Buffalo Junction. All that was changed by Award No. 8 were the rest days so that the Claimants no longer had Sunday as rest days. Thus, the Carrier action in abolishing and re-establishing positions under Award No. 8 was as follows:

Rest days On Positions Abolished

<u>Thursday-Friday</u>	<u>Friday-Saturday</u>	<u>Saturday-Sunday</u>	<u>Sunday-Monday</u>	<u>Total</u>
1	1	5	3	10

Rest Days On Positions Established Under Award No. 8

<u>Thursday-Friday</u>	<u>Friday-Saturday</u>	<u>Saturday-Sunday</u>	<u>Sunday-Monday</u>	<u>Total</u>
0	2	5	2	9

In this case, just as in Award 8289, the Carrier complied with the requirements of Rule 2 (f) in meeting with the Local Chairman and a committeeman to discuss operational needs which necessitated the proposed changes in assignments. The rule in that case is identical to Rule 2 (f) and we concur with the analysis in Award 8289 as applicable here just as in that case.

In Second Division Award No. 8289, the Board found:

" . . . the Organization has convincingly argued that deviation from Monday to Friday work week assignments to Tuesday to Saturday schedules is the only change permitted and is specifically referenced in sub-paragraph (f) of Rule 1-A, cited above. Further, the Organization states that seven (7) day positions under sub-paragraph (d) of Rule 1-A can only be established where such positions have been filled previously in this manner. The record before us does not indicate that any of the positions at the shop facilities on the repair tracks have previously been filled on a seven (7) day position basis. Therefore, we conclude that although the carrier had the right to change work week assignments, this right was limited by the specific language of the agreements referred to above. Establishing work weeks with Sunday as one of the five (5) days contemplated in an employee's standard work week assignment violated the terms of the agreement. The remedy for this violation is dictated by the terms of Rule 7 which would require that where Sunday is one of the rest days, existing rules providing for compensation on Sunday shall apply. "

The claim is not supported by probative evidence and thus must be deemed as mere assertion of violation without the proof required. The Carrier established the need for rearranging shift assignments in accord with its right to arrange its forces and manage its business in accordance with operational needs. Lacking proof that Carrier failed to meet its responsibilities under the Agreement in making the changes in shift assignments the claim must be denied. The same principles are involved here as in Second Division Award 3630 as follows:

"It is a fundamental principle of the employer-employee relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language. "

"The several divisions of this board have also consistently recognized that the petitioning organization bears the burden of proving that the carrier has surrendered its fundamental rights by agreement. . . . "

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Award No. 10054
Docket No. 9893
2-N&W-CM-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1984.