

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10383
Docket No. 10173
2-BN-CM-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railway Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railway Company violated Rules 1(a), (b), (c), (d), (g), and (h), Rule 4, Rule 6, and Appendix K of our Current Agreement when on December 4, 1981 they arbitrarily changed their operation from a six (6) day to a seven (7) day assignment at Superior, Wisconsin.
2. That, accordingly, the Burlington Northern Railway Company be ordered to compensate the following listed Superior Carmen whose work week was changed December 4, 1981: W. M. Anderson, C. Andrews, R. Breitling, M. Clarine, G. Clark, L. Deluney, R. Hietala, D. Krugen, R. Lachowitz, J. D. Linden, J. Lyons, J. McCahan, B. Monson, J. Stralka, J. Windorski, and any additional men who are affected at a later date, in the amount of eight (8) hours at the time and one-half (1.5) rate for each Claimant for every Sunday they are forced to work, and further they be compensated in the amount of eight (8) hours at the straight time rate for each Claimant's first rest day of their new assignments. It should be noted this is a continuing violation commencing December 4, 1981 and continuing until dispute is settled and that there may be additional Claimants who will be forced to work these illegal positions due to the reassignment of positions.
3. Further, that the Burlington Northern Railway Company be ordered to return to a six (6) day operation at Superior.

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 waived right of appearance at hearing thereon.

On December 4, 1981, Carrier changed the work week at its Superior repair facility from a six-day week with Saturday-Sunday and Sunday-Monday rest days, to a seven-day week with Monday-Tuesday and Wednesday-Thursday rest days. Additionally, the Carrier abolished the Carmen's second shift, effective December 4, 1981. A time claim was filed on behalf of the Claimants, seeking eight-hours' compensation for each Claimant at the time and one-half rate for each Sunday worked, and eight-hours' compensation at straight-time for each Claimant's first rest day in their new assignments.

The Organization contends that the Carrier's schedule change violates Rules 1(a)-(d), 1(g), 4, 6, 8, and Appendix K of the current Agreement, all governing the work week and wage scales.

"Rules 1(a)-(d)

- (a) Eight hours of service will constitute a day's work. All employees coming under the provisions of this agreement, except as otherwise provided in this schedule of rules, or as may hereafter be legally established between the Railway Company and employees, shall be paid on the hourly basis.

Note: The expressions 'positions' and 'work' used in this rule 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.

- (b) General: The work week for all employees, subject to the exceptions contained in this agreement, shall be forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the work weeks may be staggered in accordance with the Railway Company's 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 this agreement.
- (c) Five-day Positions: On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.
- (d) Six-day Positions: Where the nature of the work week is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday."

"Rule 1(g)

(g) 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 Railway Company contends cannot be met under the provisions of paragraph (c) of this rule, and requires that some of such employees work Tuesday through Saturday instead of Monday through Friday, such assignments may be agreed upon by the Railway Company and General Chairman of the organization involved. If the parties fail to agree thereon and the Railway Company nevertheless puts such assignments into effect the dispute may be processed as a grievance or claim."

"Rule 4

Except as otherwise provided in this agreement, work performed by an employee on his rest days or on the following legal holidays: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, will be paid for at the rate of time and one-half on the actual minute basis with a minimum of two hours and forty minutes at time and one-half rate."

"Rule 6

All service performed outside of bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

"Rule 8

When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time."

"Appendix K

All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regular assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof."

The Organization argues that because a seven-day work week was never in effect at the Superior facility before this change, the aforementioned rules limit the Carrier to a deviation only from a Monday-Friday week to a Tuesday-Saturday week.

The Organization argues, in addition, that any backlog of cars that existed prior to this change was the result of a massive layoff of Carmen that took place between August and December 1981. In other words, the Organization contends that the Carrier has failed to show that an operational problem arose that could not be met by a six-day work week.

The Carrier contends that there is no contract provision that prevents it from staggering work assignments through the week to cover seven-day service requirements. The Carrier maintains that there is a bona fide need for staggered assignments, as evidenced by the fact that repair work has always taken place on Sunday at the Superior facility; prior to December 4, 1981, this work was done on an overtime basis on Sundays, at additional expense to the Carrier.

The Carrier further argues that because repair work is required seven days per week and because the Agreement does not prevent such a scheduling change, the Carrier was under no obligation to confer with the employees in order to reach an agreement about the work schedule before implementing it.

Finally, the Carrier argues that there is no basis to award the damages sought by Claimants, even if the claim has merit. The Carrier maintains that the Claimants have already received straight-time pay for any Sundays worked; also, the claim for eight-hours' pay for the first rest day of the new assignments constitutes a double penalty.

This Board has reviewed all of the arguments and evidence in this case, and it finds that at the time in question, there is no doubt that the Superior facility was a six-day operation. Moreover, it has been established that prior to going to a seven-day operation, Carmen were called in for overtime on weekends, and many declined and had their names removed from the overtime list. Consequently, the Carrier was unable to meet the demands of its customers. There was a continuing backlog problem of cars needing repairs, and the only solution for the Carrier was to go to a seven-day week. In the language of Rule 1, the "Railway Company's operational requirements" had required that the Carrier "stagger" the work week; it was no longer "practicable" to have the days off be Saturday and Sunday.

Although the Organization contends that the backlog of cars was a direct result of the massive layoffs which had taken place prior to the move to a seven-day operation, this Board does not have enough evidence before it to support that assertion. The burden of proof is on the Organization. Even so, it is still evident from the record that the work was just not getting done, and the Carrier needed a seven-day operation in order to meet the needs of its customers.

Finally, it is clear that Rule 1(g) is not applicable to the six-day operation, such as the one at hand, since it refers simply to deviations from the regular Monday-Friday work week. Hence, absent an agreement between the Railroad and the General Chairman, the Carrier can implement the new work schedule.

As has been stated many times, except insofar as it might be restricted by the Collective Bargaining Agreement and limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work within the limitations of the Agreement and in the interest of efficiency and economy. (See Second Division Award 5331.)

The Organization claims that the Carrier had no right to abolish the second shift and then claim that it needed a seven-day work week to get the work done. However, the issue of the abolition of the second shift is not before this Board at this time. We, therefore, are unable to rule upon it.


This Board has reviewed the language of Second Division Award 8289, submitted by the Organization, as well as the Dissent by the Carrier Members, and concludes that in the case at hand, the Carrier had the authority under the Agreement to change from a six-day to a seven-day operation. Nothing in the language of the Agreement precludes it, and we are bound by that Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1985.