

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet and Eastern Railway Company violated Rules #88, #96 and #97 of the current working Agreement when they recalled from furlough to work on the Gary, Indiana Repair Track Temporary Carmen R. Kelly, S. Marsh, G. Anderson, R. Davies, J. Slusser, A. Clark, L. Poe and K. Hamilton and worked them on Saturday and Sunday, their normal rest days, and only compensated them at the pro rata rate. Dates involved are Saturday and Sunday, January 7 and 8, 1984; Saturday and Sunday, January 14 and 15, 1984; and Saturday, January 21, 1984.

2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate the above-named Temporary Carmen an additional four (4) hours' pay at the pro rata rate on the dates as shown by each Temporary Carman's name account of said rule violations:

K. Hamilton - Sat., Jan. 7 and Sun., Jan. 8, 1984
A. Clark - Sat., Jan. 7 and Sun., Jan. 8, 1984.
J. Slusser - Sat., Jan. 7 and Sun., Jan. 8, 1984.
R. Kelley - Sat., Jan. 14 and Sun., Jan. 15, 1984.
G. Anderson - Sat., Jan. 14 and Sun., Jan. 15, 1984.
R. Davies - Sat., Jan. 14 and Sun., Jan. 15, 1984.
L. Poe - Sat., Jan. 14 and Sun., Jan. 15, 1984.
S. Marsh - Sat., Jan. 21, 1984.

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.

Claimants were Carmen on furlough when recalled because of an upturn in business. The Claims are for work on Saturday and Sunday immediately following the recall.

Two Rules govern the workweek. Rule #88 - The 40-Hour Workweek - reads in relevant part:

"(a) - General:

The Carrier will establish for all employees within the scope of this agreement, subject to the exceptions contained in this rule, a workweek of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the workweeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing workweek rule is subject to the provisions of this agreement which follows:

(b) - Five-Day Positions:

On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday."

Rule #96 - Rest Day and Holiday Work - reads, in part, as follows:

"(a) Service performed by an employee on his first assigned rest day and/or designated holidays, shall be paid for at the rate of time and one-half. .

(b) Service performed by a regularly 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 workweek and has worked on the first rest day of his workweek, 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 thereof."

It was undisputed that recalled employees have ten days in which to report pursuant to Rule 82.

The Carrier argues that the President of the Local approved of working the employees on Saturday and Sunday at the straight time rate and that this representation should be binding. It is unfortunate for good faith in Labor Relations that such commitments are made, but scores of Awards hold that only the General Chairman can deviate from the terms of the Agreement. We will follow those Awards.

The same doctrine must be applied to the agreement of the Claimants to work at straight time during the period. This fact was not refuted by the Organization, but once the Claims have been submitted, the provisions of the Agreement must determine the outcome.

The Carrier stated that the employees report to work unassigned and remain so because of the ten day reporting provision, until the Monday after they report to work when they are assigned to a bulletined position. The Carrier characterized this unassigned work as coming from a "pool." The Organization denied that a "pool" existed, but did not adequately refute the contention that the employees were unassigned.

Rule 88, the governing rule, does not mandate that employees have Saturday and Sunday as rest days. The rest days are described such that "so far as practicable the days off shall be Saturday and Sunday." The contention was made that a seven day operation would be the example of a non-practicable assignment. However, the rule is not so qualified.

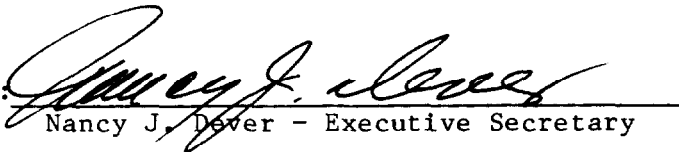
Because of the nature of the duty to report and the temporarily unassigned nature of the employee it is not practicable to initially assign him Saturday and Sunday as rest days. It obviously becomes practicable on the following Monday. We find that for the short period of time the recalled employees did not have a regular assignment, the rule permits Saturday and Sunday work, so long as the forty hour provision is not exceeded, to be paid at the straight time rate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 1st day of July 1987.