Award Number 189
Docket Number SG-95

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

DISPUTE.—"Shall regularly assigned maintenance forces on positions which have been recognized as necessary for the continuous operation of the railroad, be compensated for time lost February 21st and 22nd at rate applicable for those days because of special bulletined provisions as posted February 12th by Signal Engineer A. P. Hix?"

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employees involved in this dispute are respectively carrier and employees withtin 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.

The parties to said dispute were given due notice of hearing thereon.

This dispute being deadlocked, Paul Samuell was called in as Referee to sit with this Division.

A total of nineteen Signal Department employees regularly assigned to maintenance service are involved, ten of whom worked first trick, five second trick, and four worked the third trick, all claimed punitive rate for time not worked on February 21 and 22, 1935.

On February 12, 1935, carrier caused written notice to be given complainant employees that their services would not be required on Washington's Birthday, February 22, 1935. (Some of affected assignments starting shortly before 12:01 a. m. on that date.

An agreement, bearing effective date of August 1, 1927, is shown to exist between the parties governing wages and working conditions of employees *therein designated; and also a supplemental Agreement executed by them* September 29, 1931, reading as follows:

> "In meeting with the Signalmen's organization this date, it was agreed that the five day week would be put into effect for all forces during the period of depression. It was understood that this action was temporary and that it would not have any effect on the provisions of the Agreement, it being understood that we revert to the six day week when it can be done."

Petitioner cites and relies upon Rule 6 for the 1927 Agreement as follows:

> "*A Day's Work.*—Eight (8) consecutive hours, exclusive of the meal period, except as otherwise provided in these rules, shall constitute a day's work. Six consecutive days shall constitute a week's work. Employees working the seventh day shall be paid at the overtime rate for the seventh day."

same were violated by the carrier in engaging the services of complainant employees but four days in the week February 17 to 23, inclusive, 1935.

The carrier cites and relies upon Rule 13 of the 1927 Agreement, as follows:

> "*Overtime.*—(*a*) Overtime will be paid on the actual minute basis at rate of time and one-half for all work performed in excess of eight hours.
>
> "(*b*) Work performed on the assigned day of relief and the following legal holidays, namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday) shall be paid at the rate of time and one-half.
>
> "Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railroad."

and the Supplemental Agreement of September 29, 1931, hereinbefore quoted, to show that there was no violation of Agreement in the transaction complained of.

It is contended by the employees that Rule 6 "guaranteed" a six day work week up until September 29, 1931, when, by mutual agreement, the number of days was reduced to five; that continuous service requirements were and have always been considered between the parties as necessary, and because of such continuous service conditions the employees agreed at the time of the execution of the contract on August 1, 1927, that Sundays, when fixed in a regular schedule, would be worked at straight time; that the employees' organization, acting in good faith, accepted the Agreement under such conditions; that the carrier has, by the actions complained of, now declared that continuous service *is not necessary, and that, therefore, the carrier should be compelled to* recognize the six day (now five day) guarantee rule, otherwise the employees will be entitled to compensation at time and one-half rate for all Sunday work.

Exhaustive Briefs have been filed in this dispute, and the matter has had the serious consideration of the Referee.

It is found in another contract between carrier and employees, a clear six day guarantee rule, which in effect, prohibits carrier from reducing regular forces below six days per week, but in this dispute we find no such rule in the contract. It is neither expressed nor implied, and this Division is without the right in this particular case to consider representations made by either party prior to the adoption of the contract. It is presumed that all representations and negotiations were contained in the contract as adopted. While it is true that the carrier has for a great many years operated this Railroad Terminal as a "continuous operation", yet such practice is not necessarily *conclusive upon the carrier as to the essentiality of the operation of the* Railroad. Conditions change and it frequently happens that things which seemed necessary or essential in the past are unnecessary or unessential at the present time. Furthermore, no evidence was introduced at any of the hearings in this dispute as to whether the work herein involved was necessary or essential to the continuous operation of the Railroad on the days involved. Be that as it may, the following sentence contained in Rule 13, "Sunday and Holiday work will be required only when absolutely essential to the continuous operation of the Railroad", must be given consideration. This language is not vague; quite the contrary, it is clear. The record shows that the Holiday rule carrying the punitive rate was made for the purpose of forcing the management to employ the least possible number of men on Holidays, and thus permit as great a number of employees as possible to enjoy such Holidays along with other citizens.

This Division on several previous occasions has held that it has no right or authority to write an additional rule into an agreement, nor has it any authority to modify the terms of an agreement. To support the contention of employees in this dispute would, in the opinion of the Division, require such action. If the record in this case had shown that the work of the signalmen involved in this dispute was on these particular days absolutely essential to the continuous operation of the Railroad, then this Division would probably have been justified in arriving at a different conclusion. This Division does not at this time pass upon the right of these employees to demand and receive time and one-half pay for Sunday work.

The abrupt departure from a long time custom by the carrier shows a disposition to deal with contracts which is not especially commendable. This Division is of the opinion that in all fairness to the employees the carrier should have notified employees' representatives in advance of its intention to dispense with the services of employees on these particular dates and thus create an opportunity for a fair discussion and an amicable understanding rather than a dispute which has proved to be more or less acrimonious.

AWARD

Claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Ill., this 28th day of January 1936.