

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Robert G. Corwin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
BOSTON AND MAINE RAILROAD

DISPUTE.—

"Claim for one day's pay per week for signal department employes who were, by arbitrary action of the management, placed on a four day week from November 7, 1935, to January 1, 1936."

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 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.

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

This dispute being deadlocked, Robert G. Corwin was appointed as Referee to sit with the division as a member thereof.

There is in effect between the parties to this dispute an agreement bearing effective date October 1, 1929.

The issue to be determined in this docket is whether an agreement was made by the management and certain employees of the Signal Department which guaranteed the latter a five day week. The material facts are as follows:

The Boston and Maine Railroad and employees of its Signal Department entered into a contract governing the terms and conditions of the Signalmen's employment on October 4, 1929, to become effective as of October 1, partly as the result of mediation. A proposal to definitely establish a six day week has been considered and rejected. There is no such guarantee in the rules and no violation of the original schedule or of its several printed amendments and supplements is involved in the submission.

During the first week in April 1932, at the request of the management, the general chairman of the Brotherhood of Railroad Signalmen of America, representing employees of the Signal Department, met with the Engineer of Maintenance of Way. The latter stated in substance that because of business conditions the carrier was confronted with the alternative of a reduction of forces or of working days and that he wished to obtain the preference of the employees. The chairman does not personally testify as to what occurred and the only evidence concerning the conference is a letter introduced by the committee and the affidavit of chief engineer which follow in full:

BOSTON AND MAINE RAILROAD,
"Boston, Mass., April 7, 1932.

"XX-H

"Mr. ARCHIBALD, Mr. BURROUGHS, Mr. COLLINS, Mr. SUGHRUE:

"Regarding Signal Maintenance Work.

"As agreed at Staff Meeting the 5th, all signal maintenance forces, excepting Foreman and maintainers assigned to C. T. C. territory at Winchester, Lynn, Fitchburg, and East Deerfield will be put on 5-day per week working basis, effective April 15th, with the understanding that lay-off day will be either Wednesday or Thursday and the laying off of men to be on stagger system so that in case of trouble developing on any section not covered, the maintainer on the next adjoining section will be available to

protect. The Foreman on day crew if off duty will be given definite inspection assignment or used in place of some maintainer as may be required.

"Kindly make up and send in lay-off schedules and also furnish statement showing just what savings will be effected.

"H. F. FIFIELD.

"cc: Mr. JOHN E. MACNEILL,

"70 Milton Avenue, Dorchester, Mass.

"Confirms verbal understanding with you several days ago.

"H. F. FIFIELD."

"COMMONWEALTH OF MASSACHUSETTS,

"County of Middlesex, ss:

"MAY 19, 1936.

"AFFIDAVIT OF H. F. FIFIELD, ENGINEER OF MAINTENANCE OF WAY, BOSTON AND MAINE RAILROAD, IN THE CASE OF S. G. 339

"I, H. F. Fifield, being first sworn, depose and say that I was Engineer of Maintenance of Way, Boston and Maine Railroad in 1932, and in that capacity had charge of signal maintenance as well as maintenance of track and structures.

"Division Engineers were under my direct supervision, and men engaged in maintaining signals reported to and received instructions from Signal Supervisors, who were, at that time, on staff of Division Engineers.

"In 1932 business conditions were very bad, and it was necessary to make economies in all branches of the maintenance department, and ways and means of accomplishing this result were discussed with Division Engineers at Staff Meeting April 5, and it was agreed by the Division Engineers with me, as stated in letter of April 7, 1932, that all signal maintenance forces, with the exceptions specified, would be placed on a five day per week working basis, effective April 15, 1932.

"General Chairman Macneill was not present at staff meeting on April 5, but shortly before that I talked with Mr. Macneill and informed him what the program was to be and the reason for it, so that he would understand it and be in a position to either notify the men he represented or be prepared to answer any inquiries he might receive from them.

"The General Chairman made no protest about placing men on a five day week basis when made aware of the program.

"There was no agreement with the Committee that there would be no further reduction in days per work week or no further reduction in force.

"It was not understood that we were adding to, taking from, or interpreting the agreement of October 1929.

"When there is any amendment made to the rules, it is covered by an exchange of letters or by a jointly signed memorandum of agreement. Neither method was followed in this case.

"(s) H. F. FIFIELD,

"Engineer of Maintenance of Way.

"Subscribed and sworn to before me this 20th day of May 1936.

[SEAL]

"(s) G. R. FERGUSON,

"Notary Public.

"My commission expires Sept. 30, 1939."

The Brotherhood relies exclusively upon the foregoing letter with the note appended thereto as proof that an agreement was reached guaranteeing a permanent five day week, which could only be abrogated by formal amendment as provided in the schedule. Five day work was assigned until November 7, 1935, on which day the management, without conference or agreement, placed the employees on a four day week until January 1, 1936, when the five day week was restored. Claim is for a weekly loss of one day for each man.

The burden of proof is upon the claimants to establish the intent of the parties to enter into an enforceable contract supporting their contention. The letter addressed to division engineers recites the fact that at a staff meeting they had agreed among themselves and with their chief to inaugurate a five day week, and the note addressed to the chairman on a copy of the letter confirms an earlier verbal understanding. The Brotherhood argues that the use of the

word "understanding" conclusively denotes the creation of a contract. The carrier's position to the contrary is that it relates only to the acquiescence of the chairman in the policy announced by the management. While every agreement is the result of an understanding, every understanding does not amount to an enforceable agreement. Opposed to the inference which the word might possibly import is the emphatic declaration of the author of the letter that no such contract was even contemplated. While it is true that amendments of schedules are often negotiated through correspondence, an intent to modify established rules must be proved by a preponderance of the evidence.

The Brotherhood says that the five day week was agreed upon at the conference. That it was guaranteed or final is denied by the carrier, and it is incumbent on us to determine, if possible, just what agreement, if any, was then effected. All that we can deduce from the evidence is this: That the chairman arranged with the management that the men involved should be worked five days a week rather than five-sixths of them, the senior men working five in order that junior men might not be laid off. But there was nothing said, so far as the record shows, to indicate that five full days would be insured for any length of time. Even if that were asserted by the Brotherhood, as it is not, being denied by the management, the evidence would be equally balanced and we would be called upon to weigh it. The purpose of the meeting seems to be plain: To reach an understanding as to what was best for all concerned to do. The carrier has constantly refused to assure any certain employment, and the apparent purpose was to spread the work remaining. Were the grievance advanced by the senior men whose time, in effect, was shortened to four days a week, we might be confronted with a different case. But the claim is made in behalf of the junior men as well, claiming all that they sought in the clearly worded amendments they proposed, exhibited in the evidence. We cannot conclude that there was any such meeting of the minds as is elementally necessary in the formation of a foundation of contractual rights.

The Brotherhood complains that the diminution of days affected working conditions. Conceding this to be correct, unless changes in such conditions are inhibited by agreement, the Adjustment Board is without authority to act. Whether the amended Railway Labor Law otherwise covers such a situation is not for us to decide. The earlier proceedings before the Mediation Board related in the statement of facts are immaterial, except that they might indicate that the men were not then relying upon an agreement. Whatever may be the moral and the advisable duty of the carrier to confer with the men before adopting a substantial change in working conditions upon which they have relied in a spirit of confidence the benefit of which the carrier has enjoyed, we are without jurisdiction to consider unless such change constitutes violation of a legal obligation. The question now properly before this division is whether the carrier disregarded any absolute agreement to continue a five-day week as to all its signalmen. We are unable to find that an amendment to the schedule is sufficiently established by the weight of the evidence.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1936.