Award No. 904
Docket No. MW-858

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "a. Claim of the employes that the Carrier, since the beginning of this dispute has violated Rule 18, Paragraph (f), of the current Agreement and that, since October 15, 1937, the Carrier has violated both Rule 18, Paragraph (f), of the current Agreement and Item 2 of the National Mediation Agreement, Case A-395, by arbitrarily reducing all of the men in its track and bridge gangs, except foremen, from the regular full-time employment of six (6) days per week, to less than that number of days per week, instead of laying off the junior men in such gangs, thereby establishing part-time, or share-the-work practices, which the Carrier has refused to terminate upon request of the General Chairman.

"b. Claim for reimbursement for wages lost as result of such employes being arbitrarily reduced to less than the regular full work-week of six (6) days per week."

EMPLOYES' STATEMENT OF FACTS: "Employes submit that an Agreement was duly entered into between the New York Central Railroad Company with the employes thereon represented by the Brotherhood of Maintenance of Way Employes, establishing rules and working conditions governing all employes in the Maintenance of Way and Structures Department of said Railroad, which Agreement aforesaid became effective December 1, 1929, and is still in full force and effect between the parties, and was reduced to writing and signed by the New York Central Railroad Company, through its proper officials, and signed by the Brotherhood of Maintenance of Way Employes through the proper officers and representatives, said Agreement being in part as follows:

> **'Rule 19 (f). Laying off men instead of reducing hours.** When it becomes necessary to reduce expenses, gangs will not be laid off for short periods when proper reduction can be accomplished by laying off junior men. It is understood that this will not prevent local arrangements for men in the same gang to divide their time.'

"On the date that the aforementioned Agreement became effective, and for a great many years prior thereto, the regular daily and weekly work period of all employes in the Maintenance of Way Department of the New York Central Railroad was eight (8) hours per day and six (6) days per week. This practice continued until on or about 1930, a period of time when there existed throughout the country a great deal of unemployment and known as the depression period. During this period the New York Central Railroad Company engaged in the loose and variable practice of placing employes of their Maintenance of Way Department on a 2, 3, 4 or 5-day week contrary to, and in violation of, the terms and conditions of Rule 18 (f) of the existing Agreement between the employes and the Carrier.

'Although no six-day guarantee is to be read into any existing agreement by interpreting Item 2 of the Mediation Agreement, neither does the language of this Item authorize the carriers to change any seniority rights under existing agreements. If any such agreement provides that in time of slack work junior employes shall be laid off, the parties are obligated to carry out these agreements. Item 2 was intended to abolish, on request of the employes, any arrangement by which senior employes were dividing work with junior employes contrary to existing agreements. Where, however, there is no such division of work but the carrier has the minimum gang that is necessary to do the available work and the total of this work amounts to less than six days a week, there is nothing in Item 2 to require employment for six days.'

"Manifestly, after forces have been reduced to the minimum and the remaining employes obtain all of the work that is to be performed, there is no sharing with others.

"As to the meaning of 'regular employment' which appears in Item 2 of the Mediation Agreement: Extracts from the minutes of the hearing before the National Mediation Board, Pages 180 to 191, inclusive, attached as Appendix 'E,' show evidence of the definite understanding between the Conference Committee of Managers and the spokesman for the labor organizations, Chairman George M. Harrison. It was only because this authorized spokesman for the employes placed the construction which he did on Item 2 that the Conference Committee of Managers agreed to it. Prior to the adoption of that Item, various proposals had been considered dealing with **'full-time employment,' 'reverting to conditions existing prior to 1932,'** etc. All of those proposals were rejected by the Conference Committee of Managers. The expression 'full-time employment' having appeared in various proposals which had been submitted to the Conference Committee and rejected, it is perfectly clear from these extracts from the record why the Conference Committee of Managers required assurances that the representatives of the employes were not substituting the term 'regular employment' for 'full-time employment' and that the two expressions did not mean one and the same thing; this is perfectly obvious from the examples described in the discussion with the spokesman for the labor organizations. (See Appendix 'E')

"The extracts from the minutes of the hearing before the National Mediation Board and Interpretation 4, Case No. A-395 of that board, completely refute the contentions of the labor organizations as to the requirements of Item 2 of the Mediation Agreement.

"We remind your Board again that, if the Brotherhood of Maintenance of Way Employes has any doubt as to the meaning of Interpretation 4, your Board has no authority to interpret it; that the Railway Labor Act, in Section 5, Second, definitely provides that the Mediation Board alone is empowered to interpret agreements arrived at through its good offices."

(Appendices and Exhibits omitted.)

OPINION OF BOARD: The issue is whether or not the carrier, by working its maintenance of way forces less than 6 days per week, instead of laying off suffcient junior men to enable the senior men to work 6 days per week, has been violating Item 2 of the Mediation Agreement of August 5, 1937 and rule 18 (f) of the agreement between the parties.

Item 2 of the Mediation Agreement, as interpreted by the National Mediation Board on May 21, 1938, by which interpretation we are bound, requires work-sharing practices to be ended on request of the General Chairman. It does not guarantee six days work a week. In the language of the Board, it obligates the carriers not to use "a larger number of employes than the minimum necessary to do the available work or to protect the service."

Substantially the same obligation is imposed by rule 18 (f) of the agreement between the parties, which reads:

> "When it becomes necessary to reduce expenses, gangs will not be laid off for short periods when proper reduction can be accomplished by laying off junior men."

It has been held that the practice of assigning gangs to less than a full work week constitutes laying them off for "short periods." See Awards 372 and 805. Rule 18 (f) forbids this practice when "proper reduction can be accomplished by laying off junior men." The rule does not guarantee a six-day work week, as some agreements do. What it means is that when "it becomes necessary to reduce expenses" by curtailing maintenance the carrier may not divide the lessened work among its existing force if by laying off junior men the work can properly be performed. This is substantially the same obligation as that imposed by the Mediation Agreement as interpreted by the Mediation Board. In carrying out this obligation, while management necessarily has a large measure of discretion in determining what the requirements of the service call for, its discretion is not absolute and it must make a bona fide effort to comply, for otherwise the obligation would be rendered absolutely nugatory.

Has the carrier violated its obligation in this case? The carrier asserts that it has thinned its gangs as far as circumstances will permit; that the size of gangs must necessarily fluctuate and be determined by the work to be done, the nature of the weather, the density of traffic, and the extent of the territory; that the reduction in size of gangs which would be necessary if a six day work-week were established would be impractical, and would necessitate the working of gangs for two or three weeks and then laying them off entirely, or keeping only a skeleton force, which would seriously impair the service.

The employes contend that at times in the past, including the past year, gangs have been reduced below the present size, and could now be reduced in size; that many other carriers, the majority of whom do not guarantee a six-day week, have nevertheless been able to put a six-day week into effect; that the carrier's own figures show that if gangs were reduced to the average size a six-day week would require, they would still be equal to the average size gang from time to time worked by the carrier; and that the carrier has restored none of the men covered by this claim to six days, and has made no effort to comply with its obligations either under Mediation Agreement or rule 18 (f). But the chief contention of the employes is that the Mediation Agreement and rule 18 (f) both require a six-day week. The Mediation Board has decided the contrary with respect to the Agreement, and it is clear that rule 18 (f) contains no such guarantee. The employes recently sought such a guarantee from the carrier by a proposed specific rule, which was declined.

The contentions in this case, the nature of the evidence submitted, and the theory upon which the employes have proceeded, are virtually identical with those in Docket No. SG-794, Award No. 854, and we must dispose of the case as we did there. The only difference is that in that case there was no rule comparable to 18 (f), and the employes were relying solely on Item 2 of the Mediation Agreement; but, as we have held, the carrier's obligation under rule 18 (f) is substantially the same as under Item 2. What we said in Award No. 854 may be repeated with equal force here:

> "Upon the record before it the Board is unable to determine whether or not there has been full compliance * * * * The deficiency in the case made by the Brotherhood lies in its assumption that the termination of share-the-work practices of necessity requires the restoration of the regular schedule of employment of six days' work per week * * * * Whether all share-the-work practices have been terminated is a fact which cannot be assumed but must be established on

the record. While the working conditions that prevailed * * * * prior to the inauguration of share-the-work practices, and the action of other carriers in restoring the six day work week * * * * is pertinent evidence, it is not sufficient * * * * Other motives may have prompted the action of such carriers. * * * *

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"The showing made by carriers to establish their contention that all share-the-work practices have been terminated * * * * is totally inadequate. Their unsupported statement that * * * * forces have been spread as thin as efficient and economical maintenance will permit stands on the record as a statement of a naked conclusion. Facts to support it are entirely lacking. * * * *

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"Careful consideration has been given as to what dispostion should be made of the claim * * * * It appears to the Third Division, that the rights of the employe, or a group of employes, can never be established under the broad general claim made in these cases. Therefore, the Division is of the opinion that the general claim made in behalf of these employes for the restoration of * * * * six days' work per week for all regularly assigned * * * * employes should be dismissed without prejudice to the rights of any employe, or any group, or groups, of employes to file claim for compensation."

We arrive at the same conclusions in this case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claims should be dismissed without prejudice as indicated in the Opinion.

AWARD

Claims dismissed without prejudice as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of July, 1939.