Award No. 1307
Docket No. CL-1285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James H. Wolfe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) All regular assignments, except relief assignments, shall have a fixed starting time which shall be the same each day, and

(2) That all employes who are required to work outside the regular work period shall be paid at the rate of time and one-half, at the prevailing rates of pay, retroactive to January 25, 1939."

EMPLOYES' STATEMENT OF FACTS: "Below is a partial list of positions where the assigned hours differ on one or two days per week:

Location		Weekdays	Sundays
Bayside	—	6:26 A. M.- 3:23 P. M.	10:10 A. M.- 7:20 P. M.
Cedarhurst	—	6:45 A. M.- 3:20 P. M.	9:00 A. M.- 6:40 P. M.
Flushing	—	6:45 A. M.- 3:35 P. M.	10:15 A. M.- 7:30 P. M.
Freeport	—	6:00 A. M.- 2:30 P. M.	8:00 A. M.- 4:30 P. M.
"	—	2:00 P. M.-10:30 P. M.	4:00 P. M.-12:00 Mid.
Far Rockaway	—	6:30 A. M.- 3:00 P. M.	8:15 A. M.- 4:15 P. M.
" "	—	2:45 P. M.-10:45 P. M.	3:45 P. M.-11:45 P. M.
Floral Park	—	7:00 A. M.- 3:30 P. M.	10:15 A. M.- 7:10 P. M.
Hammel	—	6:40 A. M.- 3:40 P. M.	11:00 A. M.- 8:00 P. M.
Hempstead	—	6:20 A. M.- 2:50 P. M.	8:45 A. M.- 4:45 P. M.
"	—	2:30 P. M.-11:00 P. M.	3:00 P. M.-11:00 P. M.
Long Beach	—	6:40 A. M.- 3:10 P. M.	8:00 A. M.- 4:00 P. M.
" "	—	2:30 P. M.-10:30 P. M.	3:00 P. M.-11:00 P. M.
Lynbrook	—	6:40 A. M.- 3:40 P. M.	9:45 A. M.- 9:00 P. M.
Nostrand Avenue	—	6:25 A. M.- 2:55 P. M.	8:00 A. M.- 4:30 P. M.
" "	—	2:40 P. M.-10:40 P. M.	3:30 P. M.-11:30 P. M.
Rockville Centre	—	6:15 A. M.- 2:45 P. M.	8:15 A. M.- 4:45 P. M.
" "	—	2:15 P. M.-10:45 P. M.	3:00 P. M.-11:00 P. M.
St. Albans	—	6:45 A. M.- 3:28 P. M.	10:10 A. M.- 6:55 P. M.
Woodmere	—	6:55 A. M.- 3:40 P. M.	10:45 A. M.- 7:15 P. M.

"The following notices were given to employes on the platform at Arch Street Transfer:

'In the future your regular starting time will be at 9:00 A. M. with the exception of Mondays when you will report at 7:00 A. M., and Saturdays when you will report at 8:00 A. M.'

ination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: Without repeating the facts in detail since they are contained in employes' statement and agreed to by carrier, we reduce them to the single fact that there were twenty positions at 14 named stations whereon the assigned hours of work had the same starting time each week day and different starting times on Sundays. Subsequently at the World's Fair and at the Arch Street Transfer, by notices dated respectively May 9, 1939 and June 17, 1939, other positions were arranged with starting time on Mondays and Saturdays differing from other week days as well as from other week days as well as from Sunday.

The question turns primarily on the construction to be given Rule 5-A-1 of the agreement reading, so far as material here, as follows: "Regular assignments shall have a fixed starting time * * *."

In the instant case, the decrease of passenger traffic on Sundays as compared to commuters transported on week days permits of a marked reduction of trains and hence makes the earlier week day hours of starting unnecessary for Sunday.

If this were a matter of first impression, the carrier's contention, that the requirement of a "**fixed** starting time" is fully complied with when each day it is fixed even though the starting time is not uniform throughout the week, might be indulged. It would certainly permit of flexibility of operation without increase of operative costs at times when truck competition and other factors cut down gross operating revenue to crippling proportions for many railroads and that without doing appreciable hardship to the employes when the eight hour shift lay within reasonable hours. But the decisions of the U. S. Railway Labor Board and this Board seem to be to the contrary.

The wording of Rule 5-A-1, as applicable to Brotherhood of Railway and Steamship Clerks, was first nationally promulgated by the U. S. Labor Board by Decision 630, Docket 475 (Vol. 3, page 34) embodied in Rule 55 thereof and as applicable to the Brotherhood of Railroad Telegraphers by Decision 757, Dockets 1-2-3 and 1606 (Vol. 3, p. 156) as embodied in Rule 7 thereof. Neither the Pennsylvania Railroad nor the Long Island Railroad Company were parties to any of those dockets. The decisions are here cited for their historical significance and for reasons which will hereafter become apparent. The Railway Labor Board in Decision 4178, May 7, 1925 (Vol. VII Dec. U. S. L. B.) held that this worded rule (there designated as Rule 52 as it refers to express clerks) should be interpreted as requiring that starting time should be uniform as well as fixed. Again, in regard to the Telegraphers, the Labor Board in Decision 3635 on May 27, 1925 held likewise. The carrier urges that the character of the work in which telegraphers are engaged made the uniform starting rule more readily applicable to them without disturbing economical operation. While that appears reasonable, it does not seem to be the basis of the Labor Board decisions. Decision 4178 pertains to clerks.

This Board in Award 22, Docket TE-36 and in Award 967, Docket CL-979, a fairly recent case, followed the Labor Board decisions. It is said that the latter decision was to bring into line one position only where the starting time was not uniform and the circumstances were different. But in the latter case, the carrier argued that it was "absolutely necessary in order to properly protect the service of the carrier" that there be "a change in the starting time" and gave reasons therefor and the award reads: "Claim sustained with **respect to the proper interpretation or application of Rule 9.**" (Emphasis ours.) It can hardly be maintained that ordinarily the number of positions involved in the dispute would affect the principles on which the interpretation was based. It would perhaps be more practical that the parties resort to negotiations in special cases than for this Board to

attempt any weighing of alleged special circumstances in order to determine whether the situation is or is not one which should be governed by the interpretation which has been given to the rule.

Language identical to Regulations 5-A-1 was included in the Schedule of Regulations effective March 16, 1927 between the Pennsylvania Railroad and its clerical forces. On July 16, 1930 the Pennsylvania Railroad Clerical Forces' System Reviewing Committee (created by a Memorandum of Understanding effective Feb. 12, 1926) handed down Decision No. 45 which interpreted Rule 5-A-1 as the carrier now contends.

On January 1, 1934 Pennsylvania Railroad Clerks' Schedule of Regulations (effective March 16, 1927) together with the Memorandum of Understanding covering the method of handling questions between the Management and the employes covered by that Schedule were by an agreement between the representative of the employes and the Management of the New York Zone which included the Long Island Railroad, extended to provide for the inclusion therein of clerical employes of the Long Island Railroad.

On June 7, 1935 the clerical employes of the Long Island Railroad withdrew from the Memorandum of Understanding. On December 1, 1935 the present agreement between the clerical employes of the Long Island Railroad represented by the Brotherhood and the Management became effective. It is the contention of the carrier that the interpretation placed on Rule 5-A-1 by Decision No. 45 of the System Reviewing Committee (a) became part of the rule and wherever the rule was adopted the interpretation also was adopted as an integral part of it and (b) that by using the same language the Brotherhood showed an intention to adopt the interpretation given by Decision No. 45. Neither contention is tenable. While it is true that when a state adopts the statute of a sister state it also adopts the interpretation put on that statute by the highest court of the state from which the statute is taken provided such interpretation is not against the public policy of the adopting state and not flagrantly unsound. Even this doctrine is not immutable. The state in expressing its will through its legislature and interpreting that will through its agency, the judiciary, speaks by virtue of sovereignty. Parties to a contract agree only as to those matters in regard to which they intend to agree.

The language of Rule 5-A-1 may have originally come from Rule 55 of Decision 630, effective February 1, 1922. The Brotherhood of Clerks was a party to this decision. The Brotherhood disclaims any knowledge of Decision 45 until long after the present agreement was made to it Dec. 1, 1935. The affidavit of W. C. Pitman as to the discussions leading up to the adoption of Rule 5-A-1 in its present form do not gainsay such lack of knowledge. It reveals that Wysong, General Chairman, stated that "there was no use discussing this rule any further as they were well aware of its intent and the same was O. K." but does not tell us what the mutual awareness of its intent was. How then can it be contended that it intended an interpretation to apply which it may have known nothing of. Matters unknown to one party to a contract where it is at least as much the duty of the other to disclose as it is for the first to discover are not agreed upon. The minds had not met in that regard. It is equally as tenable to assert that the carrier presumably knowing of the wording of Rule 55 of Decision 630 and the interpretation put upon it by the Labor Board in Decision 4178 intended to adopt such interpretation.

The truth is that when the present agreement was formulated a new set of rules came into being even though they may have had the wording of rules which existed prior thereto on this and other railroads. The genealogy of the wording and the interpretations placed thereon by different tribunals can be persuasive only.

The employes further assert that Dec. 45 pertained to relief clerks and not to clerks filling regular assignments and that the System Reviewing

Committee was company controlled. In view of what has been above said we need not touch on this rebuttal.

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 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 Rule 5-A-1 as interpreted by this Board in other cases requires not only a fixed starting time but uniform starting times; that the station employes covered by this claim and required to work outside their regular fixed tour of duty be paid time and one half retroactive to Jan. 25, 1939; and as to the employes working on the platform on the Arch Street Transfer for the time lying outside of the tour of duty as established on other days except Saturdays and Mondays retroactive to June 17, 1939; as to the Industrial Truck Driver's position covered by Bulletin No. 54, dated May 9, 1939 for all the time on Sundays lying outside of the tour of duty established for week days and retroactive to May 9th, 1939.

AWARD

Claim sustained as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago,, Illinois, this 20th day of December, 1940.

Dissent to Award No. 1307—Docket No. CL-1285

Dissent to this award is registered because it uses as a basis for interpretation of the agreement former awards and decisions by this and other boards made in relation to different circumstances and different contract obligations instead of the fundamental conditions existing on the Long Island Railroad when the contract here involved was negotiated and executed.

That condition was that the starting times of employes included in this case on Sundays were different from the starting times on week days. As evidenced by the record in the case, that condition existed prior to the negotiation of the agreement, during its negotiation, and ever since until the instant claims were made subject of complaint. It was that condition which gave meaning to the rule relating to "a fixed starting time." The reasoning in the Opinion in this award which led to substitution of other decisions and awards to give a meaning of a "uniform fixed starting time" instead of a "a fixed starting time," as the record in this case evidenced the meaning thereof, resulted in an improper interpretation of the agreement.

S/ C. P. DUGAN
S/ R. H. ALLISON
S/ A. H. JONES
S/ R. F. RAY
S/ C. C. COOK