Award No. 2067

Docket No. CL-1962

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

That Fort Worth Warehouse Truckers L. Jones, T. McGee, J. Medlock and W. Campbell be compensated at time and one-half rate on Tuesday, February 7, 1939 and Tuesday, February 14, 1939 and all succeeding similar dates due to failure of Carrier to call them for overtime worked in connection with these positions.

EMPLOYES' STATEMENT OF FACTS: Prior to February 5, 1939 on the Fort Worth Freight Platform there were fourteen regular assigned Class 3 positions all assigned seven days per week, as follows:

1 Warehouseman
3 Stowmen
2 Callers
8 Truckers

On February 3, 1939, the following bulletin was posted by Freight Agent T. J. Buchanan:

"Ft. Worth, Texas, Feb. 3, 1939

BULLETIN

To All Concerned:

Effective Sunday, February 5th, warehouse forces will be assigned as shown below:

Seven days per week, no change:

N. Smith, Warehouseman
E. McCullough, Stowman
E. J. Walton, Caller

Employes listed below assigned 6 days per week, with rest day Tuesday:

L. Jones, Trucker
T. McGee, Trucker
J. Medlock, Trucker
W. Campbell, Trucker

days. As previously stated, the claimants made no claim themselves. Unquestionably they wanted their rest day to do with as they pleased. They have not claimed that they would have been available at 3:15 P. M., February 7 and 14 even had the Carrier desired to use them and the Carrier could have taken no exception to their not being available had we undertaken to call them because, as previously stated, this was their rest day and they had not been notified in any manner to hold themselves available for service on this day.

If the employes claim rights to call for extra service on their off days and if not so called would be entitled to a penalty, then, necessarily the Carrier would have to require that they hold themselves available for such call, which I assure your Board both the organization's representatives and the employes would seriously object to. In this respect would call attention to Award 620 of the Second Division and in that case apparently there was no rule such as our Rule 45, requiring "So far as practicable, consistent with the requirements of the service, employes shall be allowed one (1) day of rest. . . ." Yet the claim was denied account a regular, assigned man not called on his rest day and would call particular attention to that part of the findings in Award 620, reading:

> "Fitzpatrick was off duty when the work was done and it has not been established whether he was available for work on that particular day. It was not his duty to be available for work on that particular day. **It was not his duty to be available until 11:00 P. M., April 25. It would be inequitable to allow the claim for compensation advanced.** (Emphasis ours.)

"AWARD

"Claim denied."

That is true in the case now at issue. It was not the duty of the claimants to be available for duty on February 7 and 14 and they did not have to be available for duty at all on this day, or until the regular starting time on February 8 and 15.

It is hard to understand the position of the employes in this case in view of Rule 45 which was written into the agreement at their request, they being insistent that employes should be given one day of rest, not necessarily Sunday, in the seven day week, so far as it was practicable, consistent with the requirements of the service to do so and they are now coming to this Board complaining and making claim because of the fact that the Carrier did comply with this rule. It was practicable to give the claimants one day's rest out of each seven and they were so assigned.

There is no claim that any work that these men performed during their regular, assigned hours was taken over and performed by any other class of employe not coming under the Clerks' Agreement on their day of rest. The extra men who were called on February 7 and February 14 are warehouse truckers the same as are the claimants, except they did not have seniority enough to hold regular assignments and they performed work on these two Tuesdays the same as they did on other Tuesdays prior to the date of this claim, as well as other days of the week.

OPINION OF BOARD: The controlling facts in this case are not in dispute; briefly stated, they are: Prior to February 5, 1939, on the Fort Worth freight platform there were fourteen (14) regularly assigned Class 3 positions, all assigned to work seven days per week. These fourteen "regular seven day assignments" covered the following designated positions: 1 Warehouseman, 3 Stowmen, 2 Callers, and 8 Truckers. Effective Sunday, February 5, 1939, Carrier's bulletin of February 3, 1939, placed into effect the following reassignment or assignments of these fourteen positions: 1 Warehouseman, 1 Stowman, and 1 Caller to continue on seven day per week assignments—in other words, no change; Truckers L. Jones, T. McGee, J. Medlock and W. Campbell were assigned to six days per week, with Tuesday as day of rest, and the balance of the freight platform forces of seven regularly assigned positions, not here involved, viz., 4 Truckers, 2 Stowmen, and 1 Caller, were assigned to work the six days with Sunday as the day of rest.

Petitioner contends that on Tuesdays, February 7th and 14th, as well as on subsequent Tuesdays, the three regular seven day assignment could not handle the business of the Carrier and it was necessary to call additional or extra employes, and that the four regular truckers named in the claim should have been called for this Tuesday work, instead of such extra employes.

Carrier contends that the extra employes who were used on February 7th and 14th were warehouse truckers, the same as the claimant employes, except that they did not have sufficient seniority rights to hold regular assignments; that these extra employes performed work on these two Tuesdays "the same as they did on other Tuesdays prior to the date of this claim, as well as other days of the week." Carrier then cites figures and payroll information to show that the extra employes who were used on Tuesdays, February 7th and 14th, were each used on all five Tuesdays in January, the month previous, for as many or more hours per day as they each worked on February 7th and 14th.

Here it is conclusively shown by Carrier's evidence that the positions occupied by the claimant employes are bona fide six day assignments or positions; that on the day they have off, Tuesday, the positions which they occupy for the other six days of the week do not exist and that no other employes occupy these trucker positions or perform the work thereof on Tuesdays.

It is therefore shown that on and after February 5, 1939, the positions or assignments of Truckers L. Jones, T. McGee, J. Medlock, and W. Campbell ceased to be "regular seven day assignments," as contemplated by that part of Rule 42 reading:

> "* * * except regular seven day assignments, with the understanding that extra men who may work in place of a seven day man on Sundays or holidays will receive pro rata rates the same as would the regular man."

Effective February 5, 1939, such work as was performed on Tuesdays was not part of the work or assignments of these four truckers, because commencing with that date their assignments became regular six day assignments. Further, this Tuesday work commences at 3:45 P. M., about the end of the tours of duty or shifts of the positions occupeid by claimant employes on the other six days of the week.

Carrier's evidence, which is documentary in nature and is not even questioned by petitioner, shows that commencing with February 7, 1939, extra employes performed no more hours of work on Tuesdays than they had performed on Tuesdays or other days prior thereto. They could not possibly have taken over work belonging on the assignments or positions previously occupied by these four claimant employes.

These employes, therefore, have no claim to this Tuesday work, and their claim as set forth in the statement of claim cannot be allowed.

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 there was no violation of the agreement by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.