

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

GALVESTON WHARVES COMPANY

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

(1) The Carrier violated the rules of the Maintenance of Way agreement as hereinafter stipulated in assigning section laborers employed in its section gang to five and a half days per week.

(2) That said section laborers be returned to their regular assignment of six days per week.

(3) That the section laborers involved in this claim be paid the difference between what they received and what they would have earned had the Carrier not arbitrarily put into effect the five and a half day assignment,—such adjustment to be retroactive to June 3, 1940.

EMPLOYEES' STATEMENT OF FACTS: The Galveston Wharves Company employs one section gang. Effective June 3, 1940, the Carrier arbitrarily changed their assignment from six days per week to five and a half days per week.

Prior to June 3, 1940, section laborers employed in this gang were working eight hours per day, six days per week. Effective June 3, 1940, their assignment on Saturday was reduced to four hours.

POSITION OF EMPLOYEES: There is an agreement in effect between this Carrier and the Brotherhood of Maintenance of Way Employees bearing effective date of May 1, 1940. It is the position of the Employees that the Carrier has violated the provision of Article V, Rule 1, thereof which reads as follows:

"Gangs will not be laid off for short periods. * * *."

The Employees contend also that the Carrier violated the provision of Article XV, Rule 1 of said Agreement. It reads:

"Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day, except as provided in Article VI, Rule 2, unless otherwise agreed to by representative and management."

Article V, Rule 1, definitely prohibits the Carrier from laying off its employes for short periods.

Effective June 3, 1940, the employees involved in this claim have been required to lay off on Saturday afternoon, thereby losing four hours' time. Under Article V, Rule 1, the Employees consider the Carrier's action as laying men off for a short period.

Article XV, Rule 1, is clear and positive that eight consecutive hours, exclusive of the meal period, shall constitute a day's work. Under the provision of this rule, the employees involved in this claim are entitled to be paid for four hours on each Saturday since the effective date of the Carrier's orders.

It will be observed further from Article XV, Rule 1, that this rule provides that the hours constituting a day's work shall not be reduced below eight unless agreed to between the Carrier and the representative of the employees.

Attention of the Board is called to the following fact:

When the agreement was negotiated and became effective May 1, 1940, the daily assignment of these employees was eight hours per day, six days per week, and in the absence of a conference between the employees' representative and the Carrier and an agreement being reached to change these assignments, the Employees contend that the Carrier has openly violated the agreement.

There should be no question in the mind of any one but what Rule 1 of Article XV was placed in the agreement for the purpose of maintaining the assignment at eight hours per day, six days per week; and to assign these employees to fewer hours than prescribed for in Article XV, Rule 1, is a definite violation; and we contend that Rule 1 of Article V has been violated also for the reason that the Carrier has resorted to the practice of laying off the employees in this gang for short periods.

The Employees earnestly request that your Board sustain this claim.

POSITION OF CARRIER: Claim of the System Committee of the Brotherhood that the Galveston Wharves violated the rules of the Maintenance of Way Agreement in assigning section laborers employed in its section gang to five and one-half days per week.

There is nothing in the contract or in any other agreement requiring the Galveston Wharves to work section laborers any stipulated number of days per week. Copy of said contract is shown as an Exhibit.

OPINION OF BOARD: On June 3, 1940 the Carrier changed the assignment of section laborers employed in its section gang from six to five and a half days per week. The Committee claims that this action constituted a violation of Article V, Rule 1, and Article XV, Rule 1, of the current agreement which became effective May 1, 1940. These read as follows:

"ARTICLE V, FORCE REDUCTION

"Rule 1. Gangs will not be laid off for short periods. When forces are reduced or positions abolished seniority shall govern."

"ARTICLE XV, BASIC DAY

"Rule 1. Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day, except as provided in Article VI, Rule 2, unless otherwise agreed to by representative and management."

It is true that there is no specific guarantee in the rules of a six day week but as has been clearly pointed out the substitution of a shorter work week for that previously in effect is a lay-off for a short period and in the case now before us must be held to be a violation of Article V, Rule 1. Awards 372, 805, 1174. These awards are specific on this point and the rule in question was agreed to after the language employed in it had been interpreted by this Board. That language must be held to have been used in the light of that interpretation.

The Carrier does not seriously argue that Article 15, Rule 1, does not guarantee a minimum of eight hours pay for a day's work. Awards 222, 516, 1127, 1570, 1714 and 1803 would seem to settle the question. Furthermore, if this were not so, there would be no meaning to Article 6, Rule 2, providing for pay only for hours actually worked or for time employes are held on duty when interruption of work occurs by reason of inclement weather or other unavoidable causes.

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 there was a violation of Article V, Rule 1, and of Article XV, Rule 1.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.