

Award No. 5330
Docket No. CL-5225

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) That Management violated rules of the Agreement between the Carrier and the Brotherhood, effective June 1, 1946 and as revised by Agreement dated July 19, 1949, effective September 1, 1949, in assigning the hours of service of L. W. Koerner, Storehelper, Northtown Store, contrary to the provisions of said Agreements effective September 1, 1949.

(2) That L. W. Koerner, Storehelper, Northtown Store, (and his successors, if there be any) be compensated for an additional day's pay for each and every Tuesday of each week commencing September 6, 1949 that he was required to suspend work on his regular assignment of Storehelper from 8:30 A. M.-5 P. M. and relieve the Shop Deliveryman on an hours of service assignment from 7:30 A. M.-4 P. M.

EMPLOYEES' STATEMENT OF FACTS: Management, on August 31, 1949, issued notice to all concerned establishing the hours of service assignments for employees subject to the provisions of our Agreement with the Carrier to become effective September 1, 1949, as evidenced by Division Storekeeper Drieling's notice dated August 31, 1949 (Employees' Exhibit 1.)

On September 8, 1949 the Employees protested the hours of service assigned to, among others, Storehelper Mr. Koerner, as evidenced by Division Chairman McCoy's letter dated September 8, 1949 to Superintendent Thompson. (Employees' Exhibit 2.)

The Employees' protest was handled through the customary channels for handling of grievances on the property and not composed as evidenced by my letter dated May 10, 1950 to Chief of Personnel, Mr. McCauley, and his reply thereto dated May 11, 1950. (Employees' Exhibits 3A and 3B.)

As evidenced by Mr. Drieling's notice (Employees' Exhibit 1) Storehelper Koerner was assigned hours of service 8:30 A. M.-5 P. M. as Storehelper on Monday, Wednesday, Thursday and Friday of each week.

Tuesdays he was assigned as Shop Deliveryman (relieving Shop Deliveryman Adkins) with hours of service assignment 7:30 A. M.-4 P. M.

Saturdays and Sundays were designated as his rest days.

dated March 19, 1949, and the provisions of the agreement dated July 19, 1949, were fully complied with in assigning Mr. Koerner to work from 8:30 A. M. to 5:00 P. M. Monday through Friday, excluding Tuesday, and to relieve the Shop Deliveryman on Tuesday. There is therefore no merit to the claim covered by this docket.

(Exhibits not reproduced.)

OPINION OF BOARD: In establishing the forty-hour week schedule, effective September 1, 1949, in its Northtown Store the Carrier assigned Claimant to work his regular position as Storehelper on Monday, Wednesday, Thursday and Friday, hours 8:30 A. M. to 5 P. M. and Tuesdays to work as relief on the position of Shop Deliveryman, hours 7:30 A. M. to 4 P. M. Saturdays and Sundays were assigned as rest days. The position of Shop Deliveryman was filled seven days per week under the changed assignment, rest days Tuesday and Wednesday. It is the contention of the Employees that the assignment of Claimant was improper and in violation of Rule 44 (Starting Time) and Rule 33 (Absorption of Overtime).

The Carrier objects to the Board's considering this case on the merits on the ground that the claim has not been handled on the property in conformity with the rules of the current Clerks' Agreement and the provisions of the Railway Labor Act. In support of this contention Carrier cites Rule 55 of the Agreement entitled "Discipline and Grievances", particularly Section (f) thereof and Section 3, First (i) of the Railway Labor Act.

It appears that these assignments were made on September 1, 1949, and that as of September 8, 1949, the Division Chairman wrote to the Superintendent protesting the same, especially the assignment of the Claimant. The Superintendent referred the matter to the Division Storekeeper who denied the claim. Thereafter, through various steps in the grievance procedure there was an exchange of considerable correspondence between Carrier and the Employees concerning the assignments at Northtown Store, culminating, insofar as this particular Claimant is concerned, in a letter to Carrier's Chief of Personnel from the General Chairman. In that letter dated May 10, 1950, the General Chairman referred to claimed rule violations in the work assignments at Northtown Store and requested the Chief of Personnel to amend the claim before him to include the claim of Mr. Koerner as now presented. By letter dated May 11, 1950, the Chief of Personnel replied that Mr. Koerner's claim was separate and distinct from that before him, that the assignment occupied by Mr. Koerner was established in conformity with Rule 30-1 of the Agreement effective September 1, 1949, that the claim was not presented and appealed in conformity with Rule 55 (f) of the master Agreement, that the first claim presented in behalf of Mr. Koerner was in the letter of May 10 and, therefore, the claim could not then be considered.

The Chief of Personnel was in error when he stated that the first claim in behalf of Mr. Koerner was contained in the General Chairman's letter of May 10. We think it clear from our summary in the preceding paragraph that the claim of Agreement violation in the assignments at Northtown Store was properly progressed through the grievance procedure, although the personal claim of Mr. Koerner was not clearly set forth through each step. However, the claim of Mr. Koerner is merely an incident of the asserted violation of the Agreement in the assignments made. The fact that the reparations asked for because of the alleged violation may have been amended from time to time, does not result in a change in the identity of the subject of the claim (Award 3256). Full opportunity for conference on the alleged Agreement violation resulting from the protested assignments was had by both parties and they were discussed at more than one conference in the last step in the grievance procedure. As is clear from the May 11, 1950, letter of the Chief of Personnel, further conference would have been futile inasmuch as he stated therein that the assignments were proper. In this respect the comment of Referee Carter in Award 3256 is pertinent:

"* * * it was not intended by the Railway Labor Act that its administration should become super-technical and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes. * * *"

We conclude that we have jurisdiction and shall proceed to a disposition of the claim on the merits.

The disposition of this claim turns upon the interpretation to be given to Rule 30-1 (e) governing regular relief assignments in the Agreement between the Carrier and the Employees dated July 19, 1949, effective September 1, 1949, and governing the establishment of the forty-hour week. That rule reads as follows:

"(e) Regular Relief Assignments: All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement. Where no guarantee rule now exists such relief assignments will not be required to have five days of work per week.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving."

The crux of the issue herein presented is whether or not the assignment of Claimant to the relief of the Shop Deliveryman on Tuesdays constitutes a "regular relief assignment" as contemplated by the above-quoted section. In our opinion it does not. The rule contemplates that all possible regular relief assignments will be set up on a weekly basis with five days of work and two consecutive rest days to serve as relief or rest days of six or seven-day positions. It makes no provision for, and its intent from its clear wording is inconsistent with, the use of regularly assigned employees to perform relief work. (See Award 5271.)

There should be no question that Claimant was regularly assigned. Prior to the institution of the forty-hour week, it is admitted by Carrier that Claimant was regularly assigned six days per week as a Storehelper. Other Storehelpers at Northtown Store regularly assigned on a six-day basis before September 1, 1949, were continued on regular five-day assignments as Storehelpers after said date. Yet the Claimant's position was, in effect, reduced to a four-day assignment. The facts of record clearly indicate that the Storehelper position worked by Claimant four days per week was a five-day position.

By improperly requiring Claimant to relieve the position of the Shop Deliveryman, Carrier has denied him the right to work a day of what should have been his regular assignment. On that basis, the claim should be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of April, 1951.