Award No. 5424

Docket No. MW-5471

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

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

(1) That certain employes in the Bridge and Building Department on the Fitchburg Division, such as foremen, assistant foremen, carpenters, painters, masons, cooks and iron bridgemen were improperly compensated for service rendered on Saturday, September 3, 1949;

(2) That these employes be paid the difference between what they did receive at their respective straight time rate of pay and what they should have received at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Forty-Hour Work Week, established by the Chicago Agreement of March 19, 1949, became effective September 1, 1949.

On August 26, 1949, the Carrier issued a notice stating that effective September 1, 1949, all Track and Bridge and Building crews, with certain specified exceptions, were to work Monday through Friday. This established Saturdays and Sundays as the rest days.

On Saturday, September 3, 1949, the following employes, whose work week was established as Monday through Friday, were required to protect their respective positions and were paid for service rendered at the straight time rate:

Foremen H. J. Blois, J. F. McKillian, G. A. Pozzi, O. A. Lawrence.
Assistant Foremen J. A. Gagne, R. B. Churchill, T. L. Briggs, Jr.
Carpenters R. R. Brunnell, W. N. Mason, P. J. Waysville, J. F. Waysville, C. F. Murphy, E. J. Bower, J. F. Godlesky, L. M. Bolton, W. R. Wallace, G. Peters, E. Beaugrand.
Painters C. Brode, P. Herbert, P. J. Tremblay, M. F. Faille.
Masons A. A. Bisson, L. M. Daby.
Cooks M. L. McKenzie, Levi D. Lee, A. H. Huntington, J. R. Young, D. R. Johnson, I. H. Place.
Iron Bridgemen A. Delano, P. D. Bennett, P. J. Marro, R. D. Carpenter, A. E. Bassette, F. E. Waitt.

The Brotherhood contended that the above listed employes should have been paid at their time and one-half rate in lieu of their straight time rate for services rendered on September 3, 1949.

Claim was declined.

(a) When an employe does not work, because of sickness or other personal reason, or a holiday occurs on one of his regular work days, the number of days may be reduced accordingly.

(b) This section (1) shall not be applicable to emergency crews or emergency labor nor to furloughed employes called back to fill temporary vacancies."

It will be noted that in each of the aforesaid guaranteed work week rules, the language used is "calendar week." Claimants in this docket were assigned to a work week prior to September 1, 1949, Tuesday through Saturday.

Without, of course, bringing the matter to Carrier's attention, Petitioner's representative on this property, while laboring under the misconception that the provisions of the Forty Hour Week Agreement and/or the provisions of his newly revised agreement, made mandatory the setting up of a new "work week" in the middle of a previously established work week, namely, on September 1, 1949, felt that he had Carrier squarely in the middle. Claimants must be put on a new "work week," Monday through Friday. They were already on a regularly established "work week," Tuesday through Saturday. If the Carrier, through faulty application of the Forty Hour Week Agreement and/or Petitioner's newly revised agreement, placed Claimants on the new "work week" schedule on Thursday, September 1, 1949, and advised Claimants that they would not work on a Saturday, September 3, 1949, because this date would be a "rest day," petitioner's representative would immediately demand one day's pay for each claimant under the guarantee rule. If, on the contrary, Carrier did not make the new "work week" schedule effective until Monday, September 5, 1949, and worked claimants on Saturday, September 3, 1949, Petitioner's representative would immediately file a claim that these claimants worked on one of their "rest days."

Carrier worked Claimants on Saturday, September 3, 1949, as one of their regularly scheduled work days under the then established work week—Tuesday through Saturday. Carrier put the new "work week" into effect on the first day the assignment of Claimants was scheduled to work in a "work week."

This claim is nothing more nor less than an attempt on the part of Petitioner to apply a strange and unrealistic interpretation to the applicable provisions of the rules in the Forty Hour Week Agreement and/or his Revised Agreement, and to get something for nothing for his represented employes. Claimants in this docket worked a full five-day work week in the week which includes September 1, 1949. They likewise worked a full five-day work week during the first regular "work week" established pursuant to the provisions quoted above of the Forty Hour Work Week Agreement and/or the rules of Petitioner's Revised Agreement, during the work week beginning September 5, 1949.

There is absolutely no merit in this claim and it should be denied.

OPINION OF BOARD: Prior to September 1, 1949, certain of the Carrier's Maintenance of Way employes were assigned to a five-day week, Monday through Friday, others were assigned Tuesday through Saturday.

August 26, 1949 the Carrier issued notice that effective September 1, 1949, all Track and Bridge Building forces, with two exceptions not here involved, would work an eight-hour day Monday through Friday. On the same day notice was issued that Track and Bridge Building crews already working Tuesday through Saturday, under the current five-day week schedule, would work Saturday, September 3, at the straight time rate of pay. The individuals for whom the Brotherhood makes this claim worked such day and were paid at such rate. All parties concede that thereafter, under existing contracts, such employes were entitled to and are now working five eight-hour days per week with Saturday and Sunday as their rest day. Summarized to the nth degree, the sole issue in this case is whether under provisions of the Forty-Hour Week Agreement the employes were entitled to Saturday, September 3,

1949 as a rest day. If so, the Carrier does not dispute they would have been entitled to the punitive rate. Indeed, Rule 28 of the current Rules Agreement expressly so provides. In support of its position on the foregoing issue the Organization contends the Forty-Hour Week Agreement became effective September 1, 1949, hence occupants of five-day positions, such as these, were entitled to Saturday as one of their rest days thereafter. On the other hand, the Carrier takes the position that under the existing factual situation, i. e., where an employe had an assignment the work week of which did not end until on the Saturday after the Forty-Hour Week Agreement became effective, it was not obligated to arrange its operations so as to give him the benefit of that day as a rest day but could require him to work on such day at the pro rata rate, notwithstanding existing provisions of the Forty-Hour Week and the current Rules Agreements.

Article II, Section 1 (a) of the Forty-Hour Week Agreement reads:

> "General—
>
> The carriers will establish, effective September 1, 1949, for all employes, subject to the exceptions contained in this Article II, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this agreement which follow:"

Subsection (b) of the same Agreement provides:

> "On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday."

It is well known the Forty-Hour Week Agreement was executed on March 19, 1949, and the reason for postponing its effective date until September 1, 1949, was to enable the parties thereto to make whatever arrangements might be necessary in order to permit and insure compliance with its requirements as of that date.

When considered together, and viewed in the light of established reasons for delay in the effective date of the Agreement to which we have just referred, we construe the two heretofore quoted sections of the Agreement to comprehend that on and after September 1, 1949, absent exceptions contained in Article II, the occupants of regularly assigned positions, the duties of which could reasonably be met in five days, were to work five eight-hour days a week and have Saturday and Sunday off. We have been unable to find any exceptions in subsequent paragraphs of the Article which warrant the Carrier's view it could wait until September 1 to comply with these provisions of the Agreement. Therefore, application of our construction of the import to be given the two rules in question to the undisputed facts of the instant case compels the conclusion that the employes in question were entitled to Saturday, September 3, 1949, as a day off and that the Organization's claim they should have been paid at the punitive rate under the express provision of Rule 28 of the current Rules Agreement must be upheld.

Article II, Section (1) of the Forty-Hour Week Agreement, relied on by the Carrier as supporting its position affords no sound basis for a contrary conclusion. This rule merely defines the term "work week" and nothing is to be found therein which is susceptible of a construction the Carrier could require employes such as are here involved to work the Saturday following the effective date of the Agreement at the rate paid.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of August, 1951.