Award No. 5463

Docket No. MW-5395

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(1) That the Carrier violated the effective agreement when it assigned C. L. Woods, Pumper, to fill a position not comprehending five 8 hour days of service per week;

(2) That Pumper C. L. Woods be compensated at his straight time rate of pay for eight (8) hours per week, retroactive to week commencing October 31, 1949, and until such time as he is correctly assigned and compensated under terms of the agreement.

EMPLOYES' STATEMENT OF FACTS: C. L. Woods has a seniority date as Pumper as of December 7, 1944.

Prior to October 31, 1949, Pumper C. L. Woods was assigned to relieve a pumper's position at Cuervo, New Mexico, 5 days per week.

On October 31, 1949, C. L. Woods was displaced as Pumper at Cuervo, New Mexico, and on the same day exercised his seniority against Relief Pumper Parker Tosh, relieving pumper's position at Santa Rosa and Cuervo, New Mexico.

This position included relieving regular pumper at Santa Rosa on Monday and Tuesday of each week, and relieving regular pumper at Cuervo on Saturday and Sunday of each week.

C. L. Woods reported each Wednesday at the Pump Station at Santa Rosa, but was not assigned any duties on Wednesdays.

Pumper C. L. Woods received payment on the basis of thirty-two (32) hours per week while assigned to this relief position.

Claim for time for eight (8) hours on Wednesdays, or the fifth day of each work week was made by C. L. Woods and claim was declined.

The agreement in effect between the two parties to this dispute, dated September 1, 1926, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

miscellaneous equipment watchmen that were in effect on October 21, 1944, as shown on Appendix A and paid a monthly rate, shall continue to be paid a monthly rate as long as the employes regularly assigned to such positions as of the effective date of this agreement occupy the positions subject to the following conditions:

> 'If a seven-day assignment is changed to a six-day assignment or a position for any reason becomes permanently vacant or the employe assigned to the position changes of his own accord, or because of the exercise of seniority rights from his position to another, or a new position of a similar kind or character is established, it shall be compensated at an hourly rate and be subject to the provisions of the overtime rules.'
>
> The hours of employes covered by this rule shall not be reduced below eight (8) hours per day six (6) days per week."

The clear intent of the rule when originally incorporated in the agreement and subsequently revised was that the carrier may not reduce the working days and hours of the assignments covered by the rule below the minimum set forth herein.

The carrier desires to reiterate the intent of the parties with respect to guarantees as set forth in Rule 23 effective September 1, 1949:

> "Nothing in this rule shall be construed to creat a guarantee of any number of hours or days of work where none now exists."

As pointed out above, Rule 50 did not, prior to September 1, 1949, provide a guarantee of any number of days of work to unassigned extra employes, and neither was such a guarantee contemplated by Rule 23 which, prior to September 1, 1949, merely stated, "Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

The carrier also desires to point out that, while in the instant claim the unassigned extra employe involved works four days a week, and therefore claims one day's compensation per week for which no service is performed, in other situations the unassigned extra employe might work from one to three days a week, and the claim could then be for from one to four days' compensation per week for which no service is performed.

The agreement does not contemplate five days' compensation for unassigned extra employes working one to four days a week, and the claim should therefore be denied.

CONCLUSION.

The carrier asserts that it has conclusively established that the claim in this docket is without merit and therefore submits that it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether the claimant has a guaranteed five day week.

Although the parties vary in their manner of statement, there is no dispute concerning the essential facts. On August 23, 1949, the position of second pumper at Santa Rosa held by claimant was abolished. On that date there was no employe junior to claimant holding an assigned position in the seniority class of pumper. From August 23, 1949, to October 30, 1949, the claimant was used, at his request, and in accordance with his seniority standing to fill a temporary vacancy on position of pumper at Cuervo, the vacancy existing because the regular assigned employe was ill. On October 30, 1949, the regular employe returned.

Beginning October 31, 1949, and since that date, claimant has been used, at his request and in accordance with his seniority standing, for extra service relieving the regular assigned pumper at Santa Rosa, a total of eight hours on rest days, Monday and Tuesday, and similarly relieving the regular assigned pumper at Cuervo, a total of eight hours on his rest days of Saturday and Sunday. He has been compensated for time actually worked on 32 hours per week at the rate of pay applicable to the positions he relieved. The claim is for compensation at the rate of 40 hours a week since October 31, 1949. The claimant reported without request of Carrier each Wednesday at Santa Rosa, but was not assigned anv duties.

The Organization bases its claim on Revised Rule 50 which is set out above. This rule contains a five-day guarantee to employes regularly assigned to the position of pumper. In essence, the Organization's case rests on the issue whether claimant is a regularly assigned pumper. The Organization relies on the fact that the claimant regularly relieves the two pumpers in question.

The Organization draws particular attention to Decision No. 1 of the 40-Hour Week Committee, dated September 1, 1949, which specifically provides that: "If the agreement contains a guarantee for regular assignment, regular relief positions shall have a guarantee to the same extent as the employes they relieve." The Carrier's answer to this contention is that the Carrier was not a party to the dispute resolved by Decision No. 1. This statement of the Carrier is not challenged by the Organization.

The Carrier contends that the claimant is not regularly assigned to a position of pumper as required by Rule 50. The Carrier relies on interpretation to Rule 9 of the Agreement made August 21, 1934. This in brief provides that when an employe is displaced, he must within 10 days exercise his seniority and failing to do so, assumes the status of an unassigned extra employe. Carrier points to the fact that when claimant was displaced in his regular position, there was no employe junior to him holding a position that he could displace. Accordingly, he relieved the pumper at Cuervo temporarily during his illness and upon his return assumed the duties he presently fills. The Carrier asserts he is not therefore assigned to any position and is an unassigned extra employe who is used for relief positions.

We have carefully examined the rules in question. There is no rule which prevents the Carrier from assigning an extra employe to do regular relief work. The Carrier calls attention to a letter from the Organization dated March 2, 1950, the relevant portion of which reads as follows:

> "It is our contention that the Carrier violated that portion of Rule 23 captioned 'Regular Relief Assignments' as well as other rules of the current Agreement when it assigned a track laborer to make regular relief on the position of crossing watchman during the hours 8:00 A. M. to 4:00 P. M. at Los Feliz Crossing, Glendale, California, on Tuesdays, a day of rest of the regular assigned position. We request that the Carrier discontinue the practice of using employes who are not in the same class, in the same seniority district for the purpose of regularly relieving positions on rest days; and establish regular relief assignments in accordance with that portion of Rule 23 captioned 'Regular Relief Assignments'. If due to the restrictive requirements of Rule 50, the Carrier does not deem this possible, then we request that such work on unassigned days be performed by an extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe." (Record p. 51.)

Carrier also relies on the following provision of Rule 23:

> "To the extent extra or furloughed men may be utilized under the agreement, their days off need not be consecutive; however, if

they take the assignment of a regular employe they will have as their days off the regular days off of that assignment.

* * * *

Nothing contained in this Rule shall be construed to create a guarantee of any number of hours or days of work where none now exists." (Record p. 20.)

and the following provision of Rule 27:

"Rule 27. * * * An assigned relief employe, or an extra or unassigned employe required to travel between two work locations (other than between work locations within the same city or terminal) in order to provide relief on assigned rest days shall be compensated for actual time traveling between such work locations, with a maximum of eight hours, at the straight time hourly rate of the position on which relief is to be furnished." (Record p. 24.)

The Organization's case rests completely on the contention that claimant was regularly assigned to the position of pumper, such assignment being of a character falling within Rule 50. Actually this contention is based on the circumstance that the claimant regularly relieves two other pumpers four days a week. In our opinion it does not follow that because an employe regularly provides relief to another employe, he is therefore assigned to a position within the meaning of Rule 50. If this were the case, claimant would be entitled to the guarantee under Rule 50 if he relieved the pumpers in question only one day a week.

The clear intent of Rule 50 was to provide a five day guarantee to employes regularly assigned to the positions therein named.

Many awards have been cited to the Board by both parties. None of them are particularly relevant. Award No. 5330 relied upon by the Organization points up particularly the factual essential lacking in this case. In Award 5330, claimant had been regularly assigned six days per week as a storehelper. After September 1, 1949, his work week as a storehelper was reduced to a four day assignment, and he was used on the fifth day to relieve the position of shop deliveryman. The claim was in our opinion properly upheld since in that case the employe was regularly assigned to a position and the Carrier's action resulted in denying him work on a day of his regular assignment. The missing link in the Organization's case is the absence of a showing of a regular assignment. Under the rules in effect, the claim must fall.

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 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

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of September, 1951.