

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned Assistant Foreman R. W. Young to render Saturday service at the pro rata rate of pay and denied him the right to work Mondays during the period February 4, 1950, to and including Saturday, August 5, and Monday, August 7, 1950;

(2) That the Carrier violated the effective agreement when they failed to call Section Foreman O. L. Olson, Section Crew SC at Seattle, to supervise the employees in his crew on Saturday, October 1, 1949, and on all subsequent Saturdays prior to June 28, 1950;

(3) That the Carrier violated the effective agreement when they called junior employees assigned to the section crew on Section SC, Seattle, on Saturday, September 10, 1949, and on all subsequent Saturdays prior to August 8, 1950, and failed to call senior employees in the crew;

(4) That Assistant Section Foreman R. W. Young be paid the difference between what he received at his straight time rate of pay and what he should have received at his time and one-half rate of pay for all Saturday service rendered during the period February 4, 1950, and August 5, 1950, both dates inclusive, and, in addition, be paid at his regular straight time rate of pay for each Monday during this period that he was denied the privilege of filling his regular assignment;

(5) Section Foreman O. L. Olson be paid at his respective overtime rate of pay for 8 hours on each Saturday, beginning October 1, 1949, and on subsequent Saturdays, prior to June 8, 1950, that the employees in his crew were required to work without Foreman Olson being permitted to supervise their activities;

(6) That the senior employees who were denied the right to render overtime service on Saturday, September 10, and all subsequent Saturdays thereto, be compensated at their regular overtime rate of pay for 8 hours per day for each Saturday that junior employees have been used, subsequent to September 10, 1949, and until August 8, 1950.

EMPLOYEES' STATEMENT OF FACTS: Effective September 1, 1949, employees employed on Section SC at Seattle, were assigned to a work week

5. There is no rule or practice granting to the Section Foreman the right to be called in preference to the Assistant Section Foreman on Saturdays for the purpose of supervising sectionmen engaged in cleaning cars.

6. The work week of the Section Foreman and the work week of the Assistant Section Foreman, as well as the work week of a portion of the sectionmen and the work week of ten sectionmen, have been staggered in accordance with the operational requirements as provided in Rule 26-1(a).

The claim covered by this docket should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: This case involves the application of the 40 Hour Work Week Agreement and seniority rules. A section crew is maintained by the Carrier on Section SC, Seattle, consisting of one General Section Foreman, one Assistant Section Foreman and twenty or more sectionmen.

Prior to September 1, 1949, the employees worked a six-day week. Their work included track maintenance work and car cleaning work. Effective September 1, 1949, the General Section Foreman and the Assistant Section Foreman and the sectionmen, with the exception of ten sectionmen, were assigned to work on Monday through Friday. Ten sectionmen junior in seniority to those who worked from Monday to Friday were assigned to work Tuesday through Saturday. The General Section Foreman was assigned to work Monday through Friday until June 29, 1950, on which day he became assigned to the position of General Foreman of Tacoma, Washington.

From September 1, 1949 to September 30, 1949, inclusive, no supervision was afforded the ten sectionmen on Saturday, who were assigned to work Tuesday through Saturday. From October 1, 1949 to January 28, 1950, inclusive, the Assistant Section Foreman was called on Saturdays to supervise the ten men assigned to work Tuesday through Saturday, and was paid on an overtime basis at his Assistant Foreman's rate.

Effective January 29, 1950, the Assistant Section Foreman was assigned to work Tuesday through Saturday, which assignment continued in effect until August 8, 1950. Effective August 8, 1950, an additional section crew in charge of a Section Foreman was established, which section crew was assigned to work Tuesday through Saturday. The position of Assistant Section Foreman was abolished.

The claims in this case are for the period from September 1, 1949 to August 8, 1950.

Several issues are involved. We will first discuss the application of Rule 26 which establishes the 40-hour week between the Carrier and the Organization. The Organization concedes that the positions in question are six-day positions under this rule and rest days for such positions may be either Saturday and Sunday or Sunday and Monday. It relies on Rule 26-1(e), which reads as follows:

"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. 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 em-

ployes of the same sub-department in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving."

In accordance with the principles set forth in Award No. 5545, we are of the opinion that the Carrier did not violate the Agreement by staggering the work weeks of employes.

The rest of the claims grow out of the supervision accorded the members of the section crew working from Tuesday to Saturday. For a brief time they received no supervision. For several months the Assistant Foreman instead of the Foreman was used on Saturdays and paid overtime at his rate. For the balance of the period the Assistant Foreman was put on a Tuesday to Saturday basis and paid for Saturday at his pro rata rate. Throughout the period all members of the crew and the Assistant Foreman were regarded as members of the Foreman's crew. The Foreman received instructions relative to Saturday work. Rule 2 of the Agreement placed the Foreman in a higher seniority rank than the Assistant Foreman. There can be little question that apart from the issue of whether the Carrier could stagger work weeks, the Carrier throughout the period in question violated the seniority rights of the Foreman. See Awards 3627, 4803 and 5061. Since he did not work on the Saturday in question, the claim should be allowed only on a pro rata basis instead of on a punitive basis.

The Assistant Foreman's claim dates from the period he was placed on a Tuesday to Saturday work week, and is also based on the contention we have held to be unsound that the Carrier could not stagger the work weeks in the manner it did.

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

The Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim (5) sustained; all other claims denied all in accordance with the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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