Award Number 5555
Docket Number CL-5577

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Carrier violated and continues to violate the Rules of the Clerks' Agreement at El Paso, Texas, District Timekeeping Bureau, when on September 1, 1949, it assigned employes:

Name	Position No.	Title
E. Barton	207	Sr. Asst. Hd. Timekeeper
T. H. Lane	212	Train & Enginemen Timekeeper
F. L. Banks, Jr.	214	Asst. Timekeeper
C. L. Lewis (deceased)	215	Enginemen's Timekeeper
E. L. Page	220	Sr. Trainmen Timekeeper
L. V. M. Bonney	224	Asst. Timekeeper
V. F. Jones	230	Sr. MP&C Timekeeper
N. D. Lawson	234	MP&C Timekeeper
M. F. Shaw	237	MP&C Timekeeper
B. F. Hagquist	244	MofW Timekeeper
F. H. Scales	245	MofW Timekeeper
M. F. Ryan	250	Sr. Station Timekeeper
S. E. Johnston	300	Head Calculator Operator
H. M. Culliton	306	Calculator Operator
R. A. Lewis	307	ICC Clerk—Calculator Opr.

to a Tuesday through Saturday work week with rest days of Sunday and Monday.

(b) That the employes as set forth in part (a), Statement of Claim, assigned to positions as shown opposite their names, and/or their successors and all other employes similarly affected be compensated eight (8) hours at the rate of time and one-half in lieu of eight (8) hours straight time allowed for each Saturday required to perform service subsequent to September 1, 1949.

(c) That the employes affected be compensated eight (8) hours at the straight time rate of their respective positions for each Monday denied the right to perform service subsequent to September 1, 1949.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) hereinafter referred to as the Carrier) and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Petitioner) bearing effective date of October 1, 1940, which Agreement (hereinafter referred to as the Agreement) was in effect on the dates involved in the instant claim. The Agreement was amended and/or revised by a Memorandum of Agreement dated July 8, 1949, and Supplement thereto dated June 30, 1950, which became effective September 1, 1949, to conform with the National 40-Hour Week Agreement signed at Chicago, Illinois, March 19, 1949. Copy of the Agreement of October 1, 1940, and subsequent revisions and/or amendments is on file with the Board and by reference thereto is hereby made a part of this dispute.

2. The Carrier maintains a District Timekeeping Bureau (hereinafter referred to as the Bureau) at El Paso, Texas, where employes covered by the Agreement perform the work of accumulating and preparing timekeeping and related data for the Carrier's Tucson and Rio Grande Divisions. Said Bureau consists of a Supervisor in Charge and a number of positions properly rated and classified under the Agreement in section divisions as established by Carrier to carry on the usual and ordinary work.

3. For years prior to September 1, 1949, all the employes, or their predecessors, occupying positions covered by the Agreement, in the Bureau were assigned to perform service daily except Sunday and holidays.

4. On August 25, 1949, immediately prior to the establishment of the shorter work week, the Carrier posted a notice, which notice is attached hereto as Petitioner's Exhibit "A", in the Bureau, to the effect that effective September 1, 1949, the rest days of certain employes would be Saturday and Sunday, and for certain other employes the rest days would be Sunday and Monday. The latter group of employes (hereinafter referred to as the Claimants) are identified by name, position number and title in item (a), Statement of Claim, and for ready reference their position numbers and titles are underscored in Carrier's notice of August 25, 1949, Petitioner's Exhibit "A".

5. In a letter dated September 3, 1949, Petitioner's Exhibit "B", addressed to the Division Superintendent, the Petitioner's Division Chairman formally protested Carrier's letter of August 25, 1949, which established a Tuesday through Saturday work week for the Claimants with rest days of Sunday and Monday.

Claim was subsequently submitted by the Petitioner's Division Chairman, Petitioner's Exhibit "C", on behalf of the Claimants and/or their successors and all other employes similarly affected, for time and one-half compensation in lieu of straight time compensation for each Saturday required to perform service and straight time compensation for each Monday denied the right to perform service, commencing September 1, 1949, and until the Agreement violation is corrected, predicating the claim on the contention that no operational requirement exists to justify a Tuesday through Saturday assignment to the Claimants and that the duties regularly assigned to them can be reasonably met in the five days, Monday through Friday.

The claim was denied by the Division Superintendent and was subsequently appealed by the Petitioner's General Chairman to the Chief Operating Officer designated by Carrier to handle such disputes. The claim was discussed in conference and by letter dated January 2, 1951, Petitioner's Exhibit "D", it was denied by Carrier.

CONCLUSION

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintains a facility at El Paso, Texas known as the District Timekeeping Bureau, the employes of which handle the timekeeping and payroll work for the Carrier's Tucson and Rio Grande Divisions, and the general shops and general stores at El Paso. Prior to September 1, 1949 there were 49 positions in the District Timekeeping Bureau working a six day week, with Sunday as the rest day of each. Effective September 1, 1949 the effective date of the 40 Hour Work Week Agreement, the occupants of these 49 positions were assigned work weeks of five days of eight hours each. The record shows that 34 of the positions were assigned Monday through Friday with Saturdays and Sundays off. No complaint is made as to these assignments. The other 15 positions, which are occupied by the Claimants, were assigned Tuesday through Saturday with Sundays and Mondays off. The Organization contends that the 15 positions assigned Tuesday through Saturday are improperly assigned, in that they should have been assigned Monday through Friday under the terms of the 40 Hour Work Week Agreement and the rules adopted pursuant thereto. The Organization insists that Claimants be paid for time lost in not being permitted to work their correct assignments, and time and one-half for the time actually worked outside of their regular asssignment if it had been correctly assigned in accordance with the controlling rules.

The following provisions of the rules dealing with the 40 Hour Work Week are material to the issues here raised:

> "Except as otherwise provided in this articlt, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."
>
> Rule 9, Agreement effective October 1, 1940.
>
> **"Day's Work and Work Week**
>
> **Establishment of Shorter Work Week**
>
> **"Note**
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> "The expressions 'positions' and 'work' used in this Rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes."
>
> Added to Rule 9, Agreement dated July 8, 1949.
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> "(a) **General.** The carriers will establish effective September 1, 1949, for all employes, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, 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 carrier's 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 the Chicago Agreement of March 19, 1949."
>
> Added to Rule 9, Agreement dated June 30, 1950.
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> "(b) **Five-day Positions.** On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

"(c) **Six-day Positions.** Where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

"(d) **Seven-day Positions.** On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

"(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."

Added to Rule 9, Agreement dated July 8, 1949.

"(f) **Deviation from Monday-Friday Week.** If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of paragraph (b), of this rule, and requires that some of such employes work Tuesday to Saturday instead of Monday to Friday, and the Organization contends the contrary, and if the parties hereto fail to agree thereon, then if the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the rules agreements."

Added to Rule 9, Agreement dated June 30, 1950.

It is the contention of the Organization that Claimants occupy five day positions and that their assignments are covered by Rule 9 (b), Agreement dated July 8, 1950. The Carrier on the other hand asserts that the positions occupied by Claimants are six day positions, controlled by Rule 9 (c), Agreement dated July 8, 1950. A determination of this issue controls the result of the dispute.

We feel obligated to point out that the provisions of the 40 Hour Work Week Agreement require a complete new approach to many problems from that taken prior to its adoption. For example, the whole concept of what constitutes a position has been altered. It has been changed by a written agreement between the parties which must be interpreted to carry out the mutual intentions of the parties at the time of its adoption. The agreement plainly provides that "positions" and "work" refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of the individual. See Agreement dated July 8, 1949. Consequently, our former concepts to the effect that a position meant the work week of the individual is no longer applicable. The plain meaning of the rule is that a position is a five, six or seven day position, if the service, duties, or operations necessary to be performed are necessary to be done five, six, or seven days a week, as the case may be. In the case before us, if the work involved was necessary to be performed on six days of the week, Claimant's positions were six day positions, and they are controlled by Rule 9 (c). On the other hand, if the work involved in the present dispute could have reasonably been performed in five days, then the position is a five day position, and it is controlled by Rule 9 (b). This is so even though all assignments made are only for five days, for the reason that the length of an employe's assignment under the 40 Hour Work Week Agreement has no relation to the question whether a position is one of five, six, or seven days. The fact is that they are all five day assignments; six and seven day assignments no longer exist.

The first question to be determined is, therefore, whether or not the duties of the positions here involved could reasonably be met in five days of

each week, or, on the other hand, whether or not the nature of the work is such that employes will be needed six days each week.

The evidence shows that the District Timekeeping Bureau at El Paso is responsible for the preparation of pay vouchers for approximately nine thousand employes on the Tucson and Rio Grande Divisions in Arizona, New Mexico and Texas. It is shown by the record that the frequency with which these employes must be paid varies in the three states named, because of the statutory requirements of each. The pay vouchers to be prepared cover employes over 962 miles of railroad. They are required to be paid twice a month. This necessitates that time slips and other data must be gathered from many stations and offices. Deductions from pay must be made for income tax, bonds, insurance, clothing and meals. This work must be completed in order that pay-checks are in the hands of employes on or before the time prescribed by law. As an example, the statutory pay days in Arizona are the 6th and 21st of each month for the last pay period of the previous month and the first pay period of the current month, respectively. In other words, the necessary data must be collected, processed and delivered at all points on the 962 miles of railroad, in a matter of a few days. The possibilities of Saturdays and Sundays intervening during the short period that this work must be done must be done must be taken into consideration. With the varying pay dates in the three states, it is apparent that several deadlines (four in the present case) must be promptly met to avoid violation of state laws.

The Organization points out that several other payroll offices on this Carrier are open Monday through Friday only, and the Organization argues that this is proof that it could also be done at El Paso. It is shown, however, that these offices have only two payroll dates, whereas at El Paso office serves many different classes of employes at widely scattered points, while the other offices referred to serve fewer classes in more localized areas. It is pointed out that two employes, one working with Sunday and Monday off and the other with Saturday and Sunday off, working approximately the same amount of overtime. Even so, the necessity for Saturday work could well exist because of the time required in collecting and processing data in payroll work within the limited period in which it must be performed. We point out also, that the positions were worked six days each week prior to the advent of the 40 Hour Work Week Agreement.

We think the evidence is sufficient to sustain the Carrier in its conclusion that the nature of the work is such that employes are needed six days each week. The burden rests upon the Employes to show, in order to maintain their claim, that the duties of Claimants' positions could reasonably be met in five days. This burden has not been met in the record here presented. We hold, therefore, that the positions here involved are six day positions as the latter term is specifically defined in the 40 Hour Work Week Agreement. This eliminates any necessity for considering Rule 9 (f), because it applies only to five day positions as defined in the Agreement. The Carrier was therefore entitled to stagger the rest days in accordance with Rule 9 (c) as amended by the Agreement of July 8, 1949. When it is determined that the nature of the work is such that employes are needed six days each week, Rule 9 (c) is self-executing, and the Carrier may properly stagger the assignments of employes by fixing the rest days as Saturday and Sunday, or Sunday and Monday, in accordance with its work needs. This the Carrier did, in accordance with its operational requirements as provided in the rule. Consequently, a denial Award is required.

The Organization asserts that the relief work at El Paso has been done in whole or in part by regular employes, working overtime. This is evidence of a violation of other rules of the Agreement providing how such relief work is to be performed. According to the Agreement itself, the least desirable solution of the problem would be to work regular employes at overtime. But this claim of the Organization cannot be considered here, because it is outside the scope of the claim made. Consequently we cannot and do not decide that issue.

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 not violated as alleged in the Statement of Claim.

AWARD

Claim denied in accordance with Opinion and Findings.

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.