

Award No. 5589

Docket No. SG-5593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Reading Company Railroad, that it is not permissible to temporarily blank regularly established six or seven-day positions.

EMPLOYES' STATEMENT OF FACTS: On Saturday, September 10, 1949, the first shift position of Signal Maintainer consisting of a six-day assignment at Newton Junction, Pennsylvania, was blanked when the regular assignee was off duty. The regularly established rest days for this position are Sunday and Monday.

On Sunday, October 16, 1949, the second shift position of Signal Maintainer, consisting of a seven-day assignment at Race Street, Philadelphia, Pennsylvania, was blanked when the regular assignee was off duty. The regularly established rest days for this position are Tuesday and Wednesday.

A difference of opinion exists between the parties to this dispute with respect to the right of the Carrier to temporarily blank six or seven-day positions when the regular assignee is off duty.

In progressing this dispute on the property in the usual manner, the Committee held that under the proper application of the shorter work week agreement signed in Philadelphia, Pennsylvania, on July 19, 1949, the Carrier cannot blank six and seven-day positions when the regular assignee does not work his assignment account sickness or other causes.

The dispute failed of a satisfactory adjustment on the property.

There is an agreement in effect between the parties to this dispute bearing effective date of January 1, 1941, which, together with subsequent revisions, is, by reference, made a part of the record covering this claim.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the Carrier cannot properly blank regularly established six or seven-day positions for one or more days when the regular assignee to a six or seven-day position is absent account sickness or other causes.

The agreement of July 19, 1949, as negotiated on this property established, in the main, a forty-hour work week consisting of five eight-hour days with Saturdays and Sundays as rest days. The rules governing are modified

minimum required for efficient maintenance, consideration will be given by the parties to reducing the working time of the remaining employees.

"Interpretation: We agreed that paragraph (b) means that where a reduction in payroll expense is necessary, it is the obligation of the Management to effect such reduction by reducing the force. After that has been done, and in the judgment of the Management, no further economies can be effected by further reduction in force, then the rule simply obligates the Committee and the Management to confer about the situation at which time perhaps the parties will agree to a reduction in the work days, or perhaps the men can show the Management how to make a further reduction in expenses without reducing the work days. In any event, if there can be no voluntary agreement as to a reduction in the work days, the rule requires the five-day week to remain in effect."

In analyzing the language of Rule 7, also of Rule 6 previously quoted herein, it will be noted the provisions of neither rule contemplate or constitute a guarantee as such for regularly assigned employees nor for regular assignments. Rule 6 established a work week of forty hours subject to the provisions set forth therein and, as previously stated, the Carrier maintains Rule 6 is not directly involved, is not applicable and does not support the Signalmen's protest or contentions in this dispute.

Rule 7 requires that regular assignments be established for not less than eight daily working hours and five work days per week. The blanking of assignments on work days on which they are temporarily vacated by the regular assigned employee does not violate the provisions of Rule 7 since action in itself did not change the "regularly established number of working days."

In view of the foregoing and in the absence of any guarantee or rule requiring the Carrier to fill assignments on work days on which the regular incumbents report off duty and temporarily vacate same and are not available, it is the Carrier's position that the blanking of positions under the circumstances present in this case, is not improper or in violation of the provisions of the currently effective Signalmen's agreement nor is the complaint or protest submitted by the Brotherhood of Railroad Signalmen supported by any provisions of the agreement. Therefore, the claim is without merit and unjustified and Carrier respectfully requests that same be denied.

OPINION OF BOARD: This claim comes before this Board on a question of interpretation. No claim is made for money payment. The principle which the Organization requests us to establish is that it is not permissible to temporarily blank six or seven-day positions.

The gist of the Employees' argument is that, because in establishing six or seven-day positions the Carrier is permitted to depart from affording "basic rest days" of Saturday and Sundays to employees regularly assigned to such positions, the Carrier is obligated to fill those positions six or seven days as the case may be. The examples which the Organization refers to in presenting this case arose in connection with signal maintainer's assignments at Newtown Junction, Pennsylvania, and at Race Street, Philadelphia. At Newton Junction on Saturday, September 10, 1949, the first shift Signal Maintainer regularly assigned Tuesday through Saturday, rest days Sunday and Monday, did not report for duty. On Sunday, October 16, 1949, the second shift Signal Maintainer regularly assigned Thursday through Monday, rest days Tuesday and Wednesday, did not report for duty. The Carrier made no arrangements to fill those assignments on these days.

The note appearing in the introductory paragraph to the Forty-Hour Week Agreement appears in Article II, Rule 6 of the Agreement between the parties here involved. It is clear from the language of the note that the

concept of a position as designating the work week assignments of individual employees no longer exists. Whether an employee is assigned to a six or seven-day position is determined by the need for employees six or seven days per week on the operation to which he is assigned. If the work is of the type where employees are needed six days per week, employees regularly assigned to that operation may be assigned rest days of either Saturday or Sunday; if to a type where the employees are needed seven days per week, the rest days may be any two consecutive days.

It is to be noted that the Agreement affords Carrier alternate though related and not necessarily mutually exclusive, methods of providing for six and seven-day work coverage where such coverage is needed because of operational requirements. One is by staggering the work weeks of the regular force, the other by creating relief assignments to cover the work of the regular force on their rest days. In the instances given by the Employees in this docket, the Carrier has established relief assignments for the six or seven-day coverage of an operation protected by a one-man force. Our consideration of the claim presented will be limited to such situations and will have no bearing on staggered work-weeks or situations where the given operation is protected by more than one employee per shift with six or seven-day coverage provided by establishment of appropriate relief assignments.

Article II, Rule 6, Sections (a), (b), (c) and (d) read as follows:

“(a)—General

“There is hereby established, effective September 1, 1949, for all employees, subject to the exceptions contained in this Rule 6, a work week of forty 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 this agreement which follow:

“(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 employees 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.”

These rules clearly indicate that in determining the assignment of forces to work on given operations an obligation is placed upon the Carrier to give consideration to the practicability of affording Saturdays and Sundays as days of rest. Naturally because of the nature of railroad operations, not all employees can be given Saturday and Sunday as rest days. However, the emphasis appearing in the five-day position rule, the seven-day position rule and in the “deviation” rule upon Saturday and Sunday as days of rest for the regular force indicates that the obligation to grant Saturday and Sunday as rest days is one of substance. It may not be discharged by the whimsical or capricious assertion that employees are needed six or seven days per week thus depriving the regular force of Saturday and Sunday rest days.

In effect, it is the Employees' contention that, when Carrier establishes six or seven-day positions indicating that the duties of the position cannot reasonably be met in five days, an obligation correlative with the privilege of assigning other than Saturday and Sunday as rest days falls upon the Carrier at all times to do that which it represents is necessary in the establishment of those positions, to wit: to cover the operation involved by filling the positions both regular and relief on the days the incumbents thereof are scheduled to work, regardless of the fact that the assigned occupant of the position or his relief may fail to report for work for causes beyond the Carrier's control and that it may be necessary to call regularly assigned employees on their rest days or require other employees to double over on a punitive pay basis. There is no provision in the Forty-Hour Week Agreement specifically imposing such an obligation upon the Carrier. It is not the function of this Board to write rules for the parties. Accordingly, to hold that the Agreement imposes such an absolute obligation upon the Carrier would require a finding that the obligation arises by necessary implication upon a construction of the Agreement as a whole.

It is clear that under the Forty-Hour Week Agreement the right to establish six and seven-day positions is founded upon the need for employees to protect services, duties or operations that number of days each week. It is apparent that the Carrier, when it chooses the method of creating relief assignments to obtain coverage of operations on a six or seven-day basis, incurs more payroll expense than it would by covering the same operation by the establishment of five-day positions. That, in itself, is evidence of the Carrier's good faith in the creation of such six and seven-day assignments. It does not necessarily follow that because on a given day a six or seven-day position is not filled, there is no need for six or seven-day coverage on the normal operation. Consequently, the fact of not filling such positions on scattered days is not an indication that they are not bona fide six or seven-day positions, that is, where the blanking is not due to an affirmative act of the Carrier but because of the employee's failure to report for duty. However, where there is repeated blanking of the position, a serious reflection is cast upon the bona fide nature of the six and seven-day position designation even though the blanking may result from the occupant's failure to report for duty. In a proper case repeated blankings of such positions might afford a basis for a claim of violation of the Agreement on the ground that such conduct is evidentiary of the fact that the positions are not in reality six or seven-day positions but in fact five and six-day positions. The foregoing indicates that it is implicit in the Forty-Hour Week Agreement that the Carrier of its own motion may not blank established six and seven-day positions of the nature here involved when the regularly assigned occupant and the relief report for duty. To go further and say that where such employees do not report for duty, Carrier must work other regularly assigned employees or relief men either on rest days or by doubling over on an overtime basis, in our opinion would be legislating for the parties. The tenor of the Agreement, particularly in the emphasis placed upon the distinction between positions and work as opposed to the work-week of the individual employee, is inconsistent with such a concept.

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 the interpretation sought by the Employees in the Statement of Claim should be answered in accordance with the foregoing Opinion of the Board.

AWARD

Claim disposed of as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of December, 1951.