

Award No. 5638

Docket No. CL-5662

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Hubert Wyckoff, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**ERIE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violates the Rules of the Clerks' Agreement at Jersey City, N. J., when it denied Employee Roy Haslam the right to exercise displacement rights as a result of a change in rest days and,

That Carrier shall now permit Employee Roy Haslam to exercise displacement rights in accordance with Agreement Rules, and,

That Roy Haslam be compensated for eight hours service performed on Saturdays and Sundays at time and one-half rate and for eight hours on Wednesday and Thursday at pro rata rate retroactive to September 2, 1949, and until such time as matter complained of has been corrected. (File 932.)

**EMPLOYEES' STATEMENT OF FACTS:** Prior to September 1, 1949, Mr. Roy Haslam, regularly assigned Usher, Jersey City Passenger Station, Jersey City, N. J. worked six (6) days per week with Monday as his regular assigned rest day. Effective September 1, 1949, his assignment was reduced to five (5) days and his relief day was changed to Wednesday and Thursday. As a result of change in rest day, Mr. Haslam requested the right to exercise displacement over junior employee having a more desirable rest day. Employees' Exhibit "A". The Employee's immediate supervisor denied his request by foot note written on Employee's request, and which denial is reproduced as foot-note on Employees' Exhibit "A". The matter was again referred to immediate supervisor by Division Chairman under date of September 9, 1949, Employees' Exhibit "B", and no reply being received the matter was appealed to the Assistant Superintendent on October 14, 1949, Employees' Exhibit "C". Claim was denied under date of November 14, 1949, Employees' Exhibit "D". Claim was appealed to Superintendent on November 30, 1949, and January 9, 1950, Employees' Exhibit "E-1" and "E-2". Claim was denied on December 2, 1949 and March 6, 1950, Employees' Exhibits "F-1" and "F-2". Under date of March 6th, 1950, Employees' Exhibit "G" claim was appealed to Assistant to Vice President, Mr. M. G. McInnes, highest Officer designated for handling employee matters. Matter was handled at conference on May 26, 1950, and Carrier offered to permit employee to displace provided he did so without penalty to the Carrier. Employees' Exhibit "H". The proposed disposition was not acceptable to the Employees and offer was rejected on September 25, 1950, Employees' Exhibit "I". Under date of March 21, 1951, Carrier renewed its offer of disposition. Employees'

Claimant it must be remembered that he was offered the privilege of displacing on May 26, 1950 but elected not to do so.

Carrier's action in reducing the Claimant's assignment to a five day basis and establishing two consecutive rest days was accomplished pursuant to the terms of the 40-Hour Week Agreement dated March 19, 1949, without changing the hours of the assignment or the essential character of the duties. Such action was in accord with the conversion rule, Article II, Section 1, paragraph (k) of the March 19, 1949 Agreement, promulgated for the sole purpose of facilitating orderly procedure while the conversion was being effected. It necessarily follows that there was no intent to violate the spirit of or to circumvent the agreement and accordingly Carrier denies any violation thereof.

The Carrier has established that under the applicable agreement, and the authority given thereunder during the conversion period, it was not required to permit the Claimant to displace as a result of his regular assignment being reduced to a five-day basis and not otherwise changed.

The Carrier respectfully submits that the claim is without merit and should be denied in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case presents the question whether a regularly assigned employee's displacement privileges were suspended by a Special Memorandum of Agreement adopted pursuant to Article II Section 1 (k) of the National Forty Hour Work Week Agreement.

The Special Memorandum of Agreement executed July 20, 1949 reads:

#### "MEMORANDUM OF AGREEMENT

The so-called National Forty-Hour Week Agreement signed at Chicago, Illinois March 19, 1949, to be effective September 1, 1949, provides in Article II, Section 1, paragraph (k) as follows:

*'Existing assignments reduced to a five day basis under this agreement shall not be considered new jobs under bulletin rules and employees will not be permitted to exercise displacement privileges as a result of such reductions. However, employees will be notified of their assigned rest days by the posting of notices or otherwise.'*

It is agreed by the parties signatory hereto that the above provisions of the Agreement of March 19, 1949 shall apply to all positions covered by Rule 7 of the current Agreement, effective December 1, 1943, amended July 1, 1945, except regular assigned relief positions.

In order to comply with Article II, Section 1, paragraph (e) of March 19, 1949 Agreement all regularly assigned relief positions subject to Rule 7 shall be abolished effective 12:01 A. M., September 1, 1949, or upon completion of the tour of duty if such tour of duty started prior to 12:00 midnight August 31, 1949.

To make effective September 1, 1949 the provisions of said paragraph (e) above referred to process of bulletining and assigning of new regular relief positions effective September 1, 1949 must be started as early as practicable and with this in mind paragraph (g) of Rule 7 will not apply to such positions until September 1, 1949. It is understood and agreed that this shall only apply to regular relief positions that are to be reassigned as a result of March 19, 1949 Agreement and vacancies resulting therefrom.

Employees who may be affected in any manner by reason of the abolishment and readvertisement of relief positions to the extent

that they will have a displacement right, may exercise such right on or after September 1, 1949 in accordance with Rule 11.

Incumbents of positions other than regularly established relief positions may make application for any or all new relief positions as they are bulletined, or any vacancies resulting therefrom.

It is agreed that this Memorandum of Agreement shall expire effective 12:01 A. M., October 1, 1949."

Rule 17—"Rights When Assignment Changed", so far as pertinent here, reads:

"(a) When the established starting time of a regular position is changed thirty (30) minutes or more for six (6) consecutive working days, the assigned days per week changed for a period of four (4) weeks or more, or the designated rest day changed, the employe affected may, within five (5) days thereafter, upon thirty-six (36) hours advance notice, exercise their seniority rights to any position, for which qualified, held by a junior employe. Other employes affected may exercise seniority rights in the same manner."

(Note: This Rule was amended effective September 1, 1949 but the only changes were to substitute "five (5)" for "six (6) consecutive working days" and to change "designated rest day" to read "designated rest days.")

Effective September 1, 1949 Claimant's designated rest day of Monday was both changed and increased to Wednesday and Thursday, August 31, 1949 to be effective September 2, 1949 Claimant gave notice of his intention to displace a junior whose assigned rest days were Saturday and Sunday. The Carrier declined to permit the displacement upon the ground that the Memorandum of Agreement suspended the exercise of the displacement privilege.

It is the position of the Brotherhood that the Memorandum of Agreement suspended displacement privileges only when the exercise resulted from reduction of existing assignments to a 5 day basis. Thus, the Brotherhood admits that the claim would be groundless, if the Carrier had simply added the day before or the day after Claimant's existing assigned Monday rest day, instead of assigning two new rest days on Wednesday and Thursday.

The sole issue, therefore, is whether the change of rest day, instead of an addition to the existing rest day, was a result of the reductions in existing assignments to a 5 day basis within the meaning of paragraph (k).

**FIRST.** The purpose of Article II Section 1 paragraph (k) was to provide an orderly conversion to a 5 day week unaccompanied by wholesale bidding and bumping.

In terms paragraph (k) does not suspend or abrogate Bulletin and Displacement Rules. It simply declares that reductions of existing assignments to a 5 day basis shall not be considered new jobs under bulletin rules and that displacement privileges shall not arise as a result of such reductions. Except for this specific limitation upon their application, bulletin and displacement rules retained their full force and effect.

So far as the positions here are concerned, the Memorandum of Agreement simply adopts paragraph (k). As a result of the conversion to a 5-day week it was apparent that most assignments needed simply to be reduced and the result of such a reduction would amount to no more than an addition to, but no change of, the existing rest day. On the other hand, it was equally apparent that many assignments would have to be changed as well as reduced. Paragraph (k) is addressed specifically and only to "existing assignments reduced" and not to existing assignments changed. In our view paragraph (k) worked no suspension or abrogation of bulletin

rights or displacement rights when something more than simply reducing existing assignments was done or required to be done.

In effect the assertion is made by the Carrier that it was impossible to adjust these positions to the 5 day basis without changing the rest days assigned to 6 of the 17 positions involved, as well as changing the existing assignments of two relief men. The record shows the assigned hours and rest days of these 17 positions both before and after September 1, 1949 from which it is not manifest that the change in rest days was inescapable. Assuming however that it was, the Claimant stands in no different case from the relief men so far as changes, as distinguished from reductions, in assignment were concerned (see Award 4898).

**SECOND.** Displacement privileges arise under Rule 17 when, among other things, the designated rest day is changed. Reduction of existing assignments to a 5 day basis involved adding a rest day, but this did not cause or require a change of the designated rest day because the new rest day could have been assigned on either the day before or the day after the existing designated rest day.

Since the designated rest day in question here was changed to another day, it follows that the Memorandum of Agreement did not suspend the application of Rule 17.

It is true that in the conversion the Carriers were faced with a task of some complexity, but they had 5 months within which to get ready for it. A complete abrogation of the bulletin and displacement rules should not be lightly assumed; and if such was the intention, it would have been simple to say so.

In view of the foregoing considerations we conclude that the change in the existing rest day here was not a result of a reduction of existing assignments to a 5 day basis within the meaning of paragraph (k).

**THIRD.** The claim is for time and one-half for the Saturday and Sunday rest days worked; and for pro rata rate for the Wednesdays and Thursdays held out of service. This amounts to a double penalty (Awards 4151, 5548, 5549 and 5423). The claim should be sustained for the days held out of service at the pro rata rate (Awards 5548 and 5549) until the matter complained of is corrected.

**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 Agreement was violated as above found.

#### AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 1st day of February, 1952.