Award No. 5854

Docket No. CL-5786

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement:

(1) When the Carrier changed the rest days of Rate and Bill Clerk S. J. Geiger from Sunday and Monday to Thursday and Friday thereby reducing his work days to less than five in the work week commencing October 2, 1949, and

(2) That Carrier shall now be required to compensate employe Geiger for time lost October 6 and 7, 1949.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, the position of Rate and Bill Clerk at Plant City, Florida, was assigned on a seven day per week basis, as a position necessary to continuous operation, with Sunday as the day of rest (Employes' Exhibit A). Employe S. J. Geiger was regularly assigned to this position when the forty-four work week Agreement went into effect on September 1, 1949, and he was regularly assigned Sunday and Monday as days of rest. A relief position was bulletined on August 17, 1949, at Tampa, Florida, for the purpose, among others, of relieving the position in question on Sundays and Mondays after September 1, 1949 (Employes' Exhibit B).

This condition continued to exist until October 4, 1949, at which time the Carrier's Agent, Mr. R. A. Daniel, notified Rate and Bill Clerk S. J. Geiger as follows (Employes' Exhibit C):

> "Effective Thursday, October 6th, your rest days will be Thursday and Friday, instead of Sunday and Monday."

Employe Geiger had observed his regular assigned rest days of Sunday and Monday, October 2nd and 3rd prior to the notice changing his rest days to Thursday and Friday, October 6th and 7th. This reduced his work week below five days for the week of October 2, 1949, as follows:

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
Sept.	25-R	26-R	27-W	28-W	29-W	30-W	Oct. 1-W
Oct.	2-R	3-R	4-W	5-W	6-R	7-R	8-W
Oct.	9-W	10-W	11-W	12-W	13-R	14-R	15-W

W—Work R—Rest Days

The Company has further shown that even if Rule 65½ were to be regarded as "guaranteeing" employes not less than five days of work per week, the requirements of such a "guarantee" were fully met with respect to claimant because he did have five days of work during the work week involved, that commencing on October 4, 1949. (In this connection, the Company has demonstrated that the rule cannot be regarded as running to the calendar week but must be construed, with other rules of the schedule agreement, as relating to the work week.)

The Company has shown, also, that the rulings and awards cited by petitioners give no support whatever for petitioners' claim, in the facts therein did not present the same issue nor involve the same principle as presented in the instant case.

The Company showed that petitioners' "statement of claim" fails to allege facts upon which a claim may be grounded, in that (1) the Company complied with and did not violate the schedule agreement when it changed claimant's rest days, (2) claimant had five full work days in the work week involved and not "less than five," and (3) claimant did not lose time on October 6th and 7th but in fact worked on two other days—the 9th and 10th—instead of on the 6th and 7th. For these reasons, petitioners' claim should not be recognized as having any standing before your Board.

The Company has conclusively shown that petitioners' claim is devoid of any merit. Accordingly it should be denied and the Company so requests.

All data contained herein have been presented to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties agree on the relevant facts pertaining to the Carrier's change of rest days for Clerk Geiger. Prior to the change in the work week effective September 1, 1949, Geiger's position, a regularly assigned one, was bulletined by the Carrier to bear a work week beginning on Tuesday. He originally worked six days (Tuesday through Sunday, with Monday off). After the adoption of the five-day week he worked Tuesday through Saturday, with rest days Sunday and Monday, until under Rule 20 (c) of the Agreement the Carrier notified him of and made effective during the week of October 2, 1949, a change in rest days—from Sunday-Monday to Thursday-Friday.

The issue between the parties has to do with the application of their Agreement, particularly Rule 48½ (a) and (i) and Rule 65½, to these facts. Both these Rules were adopted in 1949 to implement the introduction of the five-day, 40-hour week to positions within the scope of the parties' Agreement. Rule 48½ (a) defines the work week as consisting in general of five 8-hour days, with two consecutive days off in each seven. Rule 48½ (i) states that a regularly assigned employe's work week begins on the first day on which the assignment is bulletined to work. Rule 65½ contains a guarantee of five days' work per week for each regularly assigned employe.

It is to be noted that Rule 65½ does not state this guarantee in terms of a "calendar week" or in terms of a "work week". It simply mentions "five (5) days per week". And it is this lack of precise definition which gives point to the instant controversy. The Carrier contends that the "week" of Rule 65½ is the "work week" defined in Rule 48½ (i). The Organization claims that the calendar week is the one appropriate to an interpretation of Rule 65½. If the Carrier's view prevails, the Organization's claim must be denied. If the Organization's contention is upheld, so also is the claim.

We think that the proper way to resolve this dispute is to consider the effects of the respective contentions, along with what appears to have been

the parties' intent in negotiating their Agreement, following and in accordance with the recommendations of the Leiserson Emergency Board. If the Carrier's view is correct, Clerk Geiger lost no guaranteed time or pay. He merely experienced a shift of rest days within a work week beginning on Tuesday, October 4, 1949, and ending Monday, October 10, 1949. In that work week he was on duty two days, rested the next two days, and worked the next three days. This sort of work week prevailed also in every subsequent seven days beginning Tuesday. If Geiger lost no guaranteed time or pay, it follows that the Carrier need not reimburse him.

On the other hand, if the Organization's contention is the proper one, Geiger lost time and pay and should be compensated therefor under the guarantee provision of Rule 65½. During the calendar week beginning Sunday, October 2, he rested four days and worked only three rather than five days. As a matter of fact, during any calendar or pay period beginning on a Sunday, including the week of October 2, 1949, and ending on a Saturday, Geiger is short two days of work and pay.

The question then arises, could the Carrier have changed Geiger's rest days in a different manner, so as to avoid giving him fewer than five days' work in the calendar week of October 2, 1949? It could have made the change effective a week later, during the calendar week of October 9. But in this case Geiger would have worked nine successive days, and under the Agreement the Carrier would have been vulnerable to a possible claim for premium overtime pay. If this is true and if the Organization's view is correct, the Carrier would have been subject to penalty no matter which alternative method of changing Geiger's rest days had been employed.

We can find no evidence in this case that, when they wrote their Agreement, the parties intended so to penalize the Carrier. On the contrary, the parties appear to have wished, in the light of the Emergency Board's expressed desire, to provide for the Carrier a certain amount of flexibility in its operations along with appropriate protection of employes. Operational requirements sometimes demand changes in employes' rest days. The parties could not have meant to provide flexibility under one part of their Agreement and in the above-stated ways restrict or penalize the application of flexibility in another.

It appears that the main objective of Rule 65½'s guarantee was not to penalize the Carrier for changing employes' rest days in response to operating needs but to prevent the Carrier from laying off employes for brief periods during which their services might temporarily be dispensed with.

Thus, when the Agreement and its relevant rules are considered as a whole, we we are led to the conclusion that the Carrier's position in this case is the correct one. In other words, in respect to the facts and arguments developed in this case, we think that the guaranteed "week" of work and pay mentioned in Rule 65½ should be defined as the "work week" mentioned and delineated in Rule 48½ (i). So defined, Geiger's work week contained the same number of days after the change in rest days as before; and his pay for such work week was not reduced.

It must be clearly understood that this ruling by the Board is not to be interpreted in such a way that abuses prejudicial to the rights of the employes and contrary to the general intent of the Agreement should arise. We reemphasize that the intent of the Agreement is two-fold: to protect the rights of the employes as well as to provide truly necessary operating flexibility for the Carrier.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 18th day of July, 1952.