

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees—

- (1) That the Carrier violated the Agreement between the parties, effective May 14, 1948, as amended by Memorandum of Agreement, effective September 1, 1949, when, in changing the work week and assigned rest days of position of Engine Crew Dispatcher at Concord, N. H., held by Harry E. Doyle, effective Sunday, May 14, 1950, it required the said claimant Harry E. Doyle to lay off three (3) consecutive rest days and declined to compensate him on a five-day basis within the payroll period week ending Thursday, May 18, 1950; and
- (2) That the Carrier shall now be required to compensate the said Harry E. Doyle for one (1) day's pay at the regular straight time rate of his position—\$12.488 per day.

EMPLOYEES' STATEMENT OF FACTS: Harry E. Doyle holds regular position of First Trick Engine Crew Dispatcher, Concord, N. H., Engine House and is a part of the regular force at that point.

Effective September 1, 1949, the Carrier in inaugurating the 40-Hour Work Week, established this position with a work week of Sunday to Thursday, inclusive; assigned rest days Friday and Saturday.

On May 11, 1950, the said Harry E. Doyle was notified by his supervisory officer that his work week had been changed to Monday to Friday, inclusive; assigned rest days Saturday and Sunday, which change would become effective Sunday, May 14, 1950, and that he would be required to lay off Friday, May 12; Saturday, May 13; and Sunday, May 14, 1950.

Claimant Harry E. Doyle complied with the instructions of his supervisory officer by laying off on Friday, May 12, Saturday, May 13, and Sunday, May 14, 1950, and on the payroll for week ending Thursday, May 18, 1950, he received only four (4) days pay.

POSITION OF EMPLOYEES: There is in effect an Agreement between the parties, effective May 14, 1948, as amended effective September 1, 1949,

claim would, in effect, be revising the presently controlling rule. All Divisions of the National Railroad Adjustment Board have repeatedly asserted that they have no authority for such action.

Petitioner may attempt to argue that the word "week" as used in Rule 11, Paragraph (e) means payroll week. Carrier asserts it has never been so interpreted, nor was it the intent of Carrier to mean any such thing. Unless modified by an adjective, the word "week" means calendar week and has always been so considered.

Nowhere in any rule of Petitioner's agreement can there be found the slightest reference to payroll week or payroll period.

What shall constitute a "payroll period" rests solely with Management. True, on this Carrier, the payroll period begins on Friday and ends on the following Thursday. This "payroll period" could be changed at any time for it is merely a managerial method of compiling payrolls. It has nothing whatsoever to do with Petitioner's Agreement Rules. Certainly, there is nothing in Petitioner's Agreement which stipulates that employees within its scope will be worked or receive pay for a specified number of days in a payroll period. Some of his represented employees are paid on a semi-monthly payroll period. Would Petitioner assert that these employees are guaranteed a specified number of days in a semi-monthly payroll period? No, he would argue under the Weekly Guarantee Rule (above).

SUMMARY: Petitioner submits a claim in this docket which contravenes a specific rule of the controlling agreement. He asks the Board to write a new rule or revise the present one. Payroll periods are within the sole control of Carrier as are the dates on which employees shall be paid, with the possible exception of State or Federal Law.

There is no merit in the claim in this docket and it should be denied.

All factual data contained herein and argument has been brought to the attention of Petitioner.

OPINION OF BOARD: Claimant, Harry E. Doyle, worked the first trick Engine Crew Dispatcher position at Concord, New Hampshire. With the advent of the 40-hour work week the Claimant was working Sunday through Thursday with rest days Friday and Saturday.

May 11, 1950 the Claimant was notified that his work week was changed commencing Sunday, May 14, 1950 to Monday through Friday with rest days Saturday and Sunday.

The Claimant was forced to be off work Friday, May 12, Saturday, May 13 and Sunday, May 14, 1950. He received only four days pay for the payroll period ending May 18, 1950.

The Claimant contends that the Carrier violated Rule 1, the Scope Rule and Rule 11 (e) which is known as the "Five-Day Guarantee Rule".

The Agreement is based on a work week and not on a calendar week or a payroll week, therefore, we must look to the Claimant's work week.

We feel that Award 5854 is controlling of the instant case.

The rest days of the Claimant were changed. The number of days in his work week remained the same.

To hold otherwise would subject the Carrier to a claim for one day's pay. This was not contemplated under the 40-Hour Week Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.