

Award No. 6161
Docket No. CL-5966

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD CO., SAN ANTONIO, UVALDE & GULF RAIL-
ROAD CO., SUGARLAND RAILWAY COMPANY, ASHERTON
& GULF RAILROAD COMPANY**

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

(a) The Carrier violated the Clerks' Agreement at Palestine, Texas, on Sunday, April 29, 1951, when it failed to call Truck Driver R. L. Huff to perform work of his position on an unassigned day. Also

(b) Claim that Mr. Huff now be reimbursed for the actual amount he lost as a result of the agreement violation.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. L. Huff is regularly assigned to Truck Driver position No. 139 at Palestine, Texas. The position is a five day position and works Monday through Friday, with hours 7:00 A. M. to 4:00 P. M.

Although Mr. Huff and his position are assigned to work only five days per week he is frequently called to perform service on his rest days.

Although it was not necessary for him to do so, Mr. Huff advised the Carrier that he would not be available for a call on Saturday, April 28, 1951, if it should be necessary to send out his truck, as he would attend a funeral. Mr. Huff further advised he would be available Sunday morning.

On Sunday, April 29, 1951, it was necessary to have the truck leave Palestine but the Carrier made no effort to call Mr. Huff.

POSITION OF EMPLOYEES: Position No. 139, truck driver, is a five day position as comprehended in Rule 37 (b-2) which reads as follows:

"Five-Day Positions. On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday."

assign different starting times on different calendar days where the result—as here—requires the employe holding the position to work 16 hours within any 24-hour period commencing with the starting time of the previous work day."

In the light of the facts and circumstances involved in the case under consideration, the contentions and claim of the Employes as evidenced by the quoted excerpts from the Opinion of Board in the several awards above cited, which sustain the position of the Carrier in the instant case, it is obvious that the contention and claim of the Employes as here presented is without merit or basis and should therefore be denied.

The substance of all matters contained herein have been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, R. L. Huff, is a regularly assigned Truck Driver, at Palestine, Texas, with hours from 7:00 A. M. to 4:00 P. M., Monday through Friday, and rest days of Saturday and Sunday. The assignment is a "Five-Day" position. The Claimant was frequently called to work on his assigned rest days. On Saturday, April 28, 1951, the Claimant advised the Carrier that he would be attending a funeral, but would be available Sunday morning, April 29th. The Roundhouse Clerk left a note for the other clerk, reading:

"If you need truck driver call J. W. Wagner (Get Ideal taxi to get him he will be at his mother-in-laws behind N.Y.A. Building). Huff off until Sunday A. M.

"E.T. 4-27-51"

A Truck Driver was not needed on Saturday, April 28th. On Sunday, April 29th, a Truck Driver was needed to leave Palestine, Texas, at 5:30 A. M. The Carrier made no attempt to call Huff for the trip, but did call J. W. Wagner.

The Claimant contends that Rule 37 (c-6), Work on Unassigned Days, was violated because there were no unassigned or extra employes available. Therefore Huff, the regular employe, should have been called.

The Carrier asserts that the Claimant, by his notification, was not available Saturday, and, this being his rest day, it started at 7:00 A. M. and ran until 7:00 A. M. Sunday. Therefore Claimant's notification that he would be available Sunday morning referred to his rest day of Sunday, which started at 7:00 A. M. on Sunday.

It is well settled that a Carrier must call an employe entitled to work before calling one with less seniority.

In the case before us, the employe entitled to be called had informed the Carrier that he would not be available on Saturday, but would be available Sunday morning. This Board has interpreted a man's rest day as starting at the hour his regular work starts. In this instance, his rest day of Saturday began at 7:00 A. M. and his rest day of Sunday began at 7:00 A. M. Holidays are the only days referred to on a calendar basis.

With these facts in mind, we must decide what the Claimant meant when he said he would be available Sunday morning. The Claimant is a railroad man, and knew that when he referred to days of work or rest days with the railroad it referred to the hours his work started and ended, and not a calendar day.

We cannot, under the facts and the cases interpreting the starting of a work day, rest day, and holiday, hold that the Carrier violated Rule 37 (c-6)

in failing to call the Claimant to drive a truck leaving at 5:30 A. M. Sunday. The Claimant made himself unavailable Saturday. Claimant's Saturday ran until 7:00 A. M. Sunday. Therefore the Carrier had the right to assume that the Claimant was not available until his Sunday rest day started. If the Claimant had not relieved the Carrier of the responsibility of calling him, then he would have had a basis for his claim.

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

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 27th day of March, 1953.