

Award No. 6184
Docket No. TE-5924

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SEABOARD AIR LINES RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers vs. The Seaboard Airline Railroad Company that the Carrier violated the provisions of the Agreement between the parties when:

1. It established a work week Wednesday through Tuesday for L. G. Parker and J. Singletary in GO Telegraph office, Norfolk, Virginia with assigned working days of Wednesday, Thursday, Friday, Saturday and Sunday with assigned rest days of Monday and Tuesday, failing to fill the two positions on the assigned rest days of Monday and Tuesday, and

2. That, beginning with the first day of the violation and continuing until corrected, Claimants L. G. Parker and J. Singletary shall be compensated

(a) At the time and one-half rate for eight hours each Monday and Tuesday

OR

(b) for the difference between the straight time rate paid and the time and one-half rate for each Saturday and Sunday plus 8 hours at the straight time rate for Monday and Tuesday, except if either of such days be a holiday, the compensation shall be at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated October 1, 1944, amended as to rates of pay on various dates and amended as to rules covering working conditions in Supplements Nos. 1 through 5 on various dates.

Effective September 1, 1949 the following assignments were made in "GO" Telegraph Office:

Position	Assigned Hours	Days Off	Assigned to
Manager	8 A.M.- 4 P.M.	Saturday-Sunday	—
Asst. Manager	4 P.M.-12 M.N.	" "	—
Operator	5 A.M.- 1 P.M.	" "	—

office can reasonably be met in five days, but instead, allege the positions of the claimants are five-day positions and come under the provisions of Rule 12, Section 1(b)—five-day positions and Saturday-Sunday should be the assigned rest days. They do not recognize the right of the Carrier to stagger the work week to meet service operational requirements.

The Carrier holds that claimants Parker and Singletary occupy seven-day positions by virtue of the fact service necessary to meet operational requirements must be performed in GO office seven days per week and the claimants come within and under the provisions of Rule 12, Section 1(d)—seven-day positions. The opinion of the majority in Third Division Awards 5545, 5555, 5556 and 5557 proves conclusively that work weeks may be staggered to meet service requirements; that the number of days per week service is required is the controlling factor in determining what is a five, six or seven-day position; and clearly outlines the intent of the 40-hour work week agreement with respect to five, six or seven-day positions and the right to stagger the work week to meet service operational requirements. It is the position of the Carrier that the four above mentioned awards overthrow the erroneous decision of Second Division Award 1444 and Third Division Award 5393.

Finally the Company has shown that, there having been no violation of the agreement—but on the contrary claimants having been assigned entirely in accordance with the agreement and in accordance with the opinion of the majority in Awards 5545, 5555, 5556 and 5557—there is no basis whatever for the money claim presented.

Thus 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 have been presented to, discussed with or is well known to the employe representatives.

OPINION OF BOARD: The General Committee of The Order of Railroad Telegraphers claims Carrier violated its Agreement with them when, commencing September 1, 1949, it failed to fill the positions of claimant Operators L. G. Parker and J. Singletary on their rest days. Both claimants were assigned work weeks of Wednesday through Sunday with Monday and Tuesday as their regularly assigned rest days. Claimant Parker's hours were from 8:00 A.M. to 4:00 P.M. and Singletary's from 4:00 P.M. to Midnight.

The claim arises out of Carrier's rearrangement of the working assignments of its forces at its "GO" relay telegraph office in its general office building at Norfolk, Virginia who are engaged in receiving and transmitting telegraphic communications between the headquarters located there and Carrier's many divisional and local offices located over its 4,000 miles of line. The rearrangement was made effective with the effective date of the 40-hour week as such effective date was agreed to by the parties in their Supplement No. 4 to Agreement effective October 1, 1944. All of the employes involved in the rearrangement are covered by the Telegraphers' Agreement. They perform work that is required on seven days of the week in order to meet Carrier's service requirements, although the volume thereof varies throughout the week.

The employes involved in the rearrangement were eight in number and included both claimants. They consisted of a Manager, an Assistant Manager and six operators. The Manager, Assistant Manager and four operators were assigned work weeks of Monday through Friday with Saturday and Sunday as rest days. Two operators, claimants here, were assigned work weeks of Wednesday through Sunday with Monday and Tuesday as rest days. As a result of this rearrangement Carrier had six men on duty on Mondays and Tuesdays, eight on Wednesdays, Thursdays and Fridays, and two on Saturdays and Sundays. Since the amount of work varied in volume

throughout the week Carrier was able, by this arrangement, to have the regularly assigned employees do all the work on each day of the week and consequently none of the rest days of these eight employees, which included claimants, were filled.

The question presented by the claim is, does Supplement No. 4, effective September 1, 1949, permit covering the work of employees engaged in seven day services by staggering the work week assignments of regular employees in accordance with operational requirements so the rest days of some assignments coincide with the work day of others so the regular employees can do all the work Carrier finds it necessary to have performed on these days or is Carrier, without exception, required to have the rest days of employees engaged in seven day services filled in the manner provided in Supplement No. 4, that is, through the establishment of regular relief assignments, the use of extra men, or the use of the regular incumbents of the position, in that order? The Organization contends Carrier must provide relief on the rest days of all seven day positions.

Before going into the foregoing question we will first consider Carrier's contention that the claim presented here is not the same as the claim presented and handled on the property. The original claim presented on the property was based on the contention that claimants occupied five day positions and therefore should have been assigned rest days of Saturday and Sunday. See Rule 12, Section 1 (b). Here the claim is based on the contention that since the claimants occupy seven day positions their rest days of Monday and Tuesday must be filled. While this contention is not without merit we will not discuss it further nor base our award thereon since Carrier seems to desire an opinion based on the merits of the claim as here presented. The claim does, in both instances, involve provisions of Rule 12 and their application to rest days.

There is no doubt but what, under the parties' Mediation Agreement, Case A-2070, executed July 13, 1945, the Organization's contention would be sound for by the provisions thereof Carrier was required to assign the rest day work of seven day positions to regular relief employees, extra men, or, in their absence, to the regular incumbents on an overtime basis. This agreement provides, in this respect, that: "The rest day on such positions shall be assigned * * *" and "Regular relief positions shall be created for the purpose of carrying out the rest day provisions in paragraph (a) * * *". Art. 1, Sec. 1 (a) and (b), thereof.

However, when the 40-hour week was agreed to by the parties the provisions of that agreement modified these requirements. See Supplement No. 4 to parties' Agreement effective October 1, 1944.

Before going further into the provisions of the parties' Supplement No. 4, we turn briefly to the parties' Supplemental Agreement of May 17, 1950, involving (m) of Rule 12 of Supplement No. 4, since it has been referred to by the Organization as here applicable. This agreement was made pursuant to provisions of Decision No. 5 of the 40-Hour Week Committee dated at Chicago, Illinois, November 11, 1949 and Supplement thereto dated March 22, 1950. That this Supplemental Agreement has no application to the question here involved is made clear by the following language thereof:

"* * *, it is to have bearing on rules in effect on and after September 1, 1949, relating to the right of the employees, if any, or on the obligation of the Carrier, if any, to have positions filled on any day of the week."

It seems significant to note that in this Supplement Agreement, which was executed long after the 40 Hour Week became effective, the parties recognized that Supplement No. 4 had modified the Mediation Agreement for therein it is stated:

"The foregoing rule shall amend the Agreement of July 13, 1945 designated as Mediation Case A-2070 with respect to subject

matters specifically covered; other parts of the aforementioned agreement are not affected by the foregoing rule and are to remain in effect except as modified by the other provisions of the March 19, 1949 Agreement or by rules adopted pursuant thereto."

Returning then to the provisions of Supplement No. 4 we find, since the work here involved had always been performed on seven days of the week, it was proper for Carrier to assign to the claimants rest days of Monday and Tuesday for Rule 12, Section 1 (d) thereof provides:

"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."

It will be remembered that Carrier assigned six of the eight employees rest days of Saturday and Sunday which clearly indicates they did, as far as possible, carry out the intention of this rule.

Rule 12, Work Week, which includes rest days, begins with the following note:

"The expressions 'positions' and 'work' used in this Rule 12 refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees."

By this "Note" the Agreement plainly provides as to the work week that "positions" and "work" refer to service, duties or operations necessary to be performed the specified number of days per week and not to the work week of the individual. Consequently our former concept to the effect that a position meant the work week of the individual is no longer applicable insofar as it relates to the subject matter of Rule 12.

In view of this change we next look to what the parties agreed Carrier might do in regard thereto.

Rule 12, Section 1 (a) General, provides:

"The Company shall establish, effective September 1, 1949, for all employees, subject to exceptions contained in this Rule 12, a work week of 40 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 Company's operational requirements; * * * The foregoing work week rule is subject to the provisions of this Rule 12 which follows:"

Rule 12, Section 1 (e) 1 provides:

"All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day service combinations thereof, or to perform relief work on certain days and such types of work on other days as may be assigned under this agreement."

Here we have a substantial modification of the requirements of the Mediation Agreement, Case A-2070, as they relate to work weeks and rest days. Under the Mediation Agreement rest days of positions to which it applied had to be assigned and relief positions created for the purpose of fulfilling the requirement. Now Carrier may stagger the work weeks of its employees in accordance with its operational requirements and establish such relief assignments as needed to do the work necessary on rest days of assignments in six or seven day service or combinations thereof.

The determination of the number of employees needed to perform its work is the function of Management except as it has limited itself by agreement. Under the rules quoted the assignment of relief employees is not a condition precedent to the establishment of seven day positions. Relief assignments are only required to be made when there is work necessary to be done. When all the work can be efficiently performed by staggering of regularly assigned employees the necessity for relief assignments on rest days does not exist. In other words, Carrier may, in accordance with its operational requirements, stagger the work week assignments of employees regularly assigned to seven day service so that the rest days of some will coincide with the work days of others and thus make it possible for the regular employee to do all the work necessary to have performed on those days without the necessity of any relief. It should be understood that such employees must be of the same class and within the same seniority district.

Many rules are cited as still being in force and effect that existed prior to September 1, 1949 and it is suggested that we should now give them the same force and effect as they formerly had. That is true but these rules only come into effect after a relief assignment is created or need for relief exists. Consequently they have no application here.

Reference is also made by the Organization to the Emergency Board's Report, pursuant to which the 40 Hour Agreement of March 19, 1949 was drafted, as indicating no such change as Carrier here contends was contemplated thereby. If the rules here were ambiguous or uncertain this report might be a source of enlightenment but such is not the case. But even so, a careful reading of that report leaves the impression that the changes here made by the parties were within the contemplation of the Board's recommendations in order to perfect the economy in operations they therein referred to as partly justifying what they recommended.

In view of what we have said, we come to the conclusion Carrier was within its rights in handling the telegraphic work at its "GO" office in Norfolk, Virginia, in the manner that it did.

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 Carrier has not violated its Agreement with the Organization.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.