

Award No. 6232

Docket No. CLX-6168

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Salt Lake City, Utah Agency, on September 1, 1949, when employee G. I. Carlson, occupant of express handler position 34-4, was given a work week assignment of Sunday to Thursday inclusive, with rest days Friday and Saturday and relief furnished for the position on Friday only;

(b) He and other employees adversely affected shall now be compensated for eight (8) hours at the rate of time and one-half in lieu of the eight (8) hours allowed him at straight time rate for each Sunday he was required to perform service on position 34-4 retroactive to and including Sunday, September 3, 1949; and

(c) He or they shall now be compensated for eight (8) hours at straight time rate for each Friday he or they were denied the right to perform service on express handler position 34-4 retroactive to and including September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: G. I. Carlson, with a seniority date of May 6, 1919, is the regular occupant of a position titled "Express Handler", Goup 34, Position 4, hours of assignment 8:00 A. M. to 4:30 P. M. rest days Friday and Saturday, salary \$246.93 basic per month.

August 29, 1949, prior to the establishment of the shorter work week, Carrier notified employee Carlson his assignment would operate as set out in the preceding paragraph.

October 11, 1949, Local Chairman, R. A. Hart, wrote a letter to General Agent, C. B. Walker, protesting the assignment provided for position 34-4, claiming such to be in violation of the 40-hour work week agreement, calling attention to the fact that while Friday and Saturday had been designated as the rest days only one of the rest days (Friday) was being filled by the occupant of a relief position. (Exhibit "A").

CONCLUSION

Carrier has established that the position of employe G. I. Carlson, Salt Lake City, Utah was properly designated under the Rules as a seven-day position with rest days Friday and Saturday, and that no violation of the Rules occurred when Carrier did not relieve said position on calendar Saturdays.

Carrier respectfully submits that the Third Division, National Railroad Adjustment Board should dismiss the claim of the Employees herein.

All evidence and data set forth have been considered by the parties in conference and by correspondence.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant Carlson, occupant of an express handler position, was given a work week assignment of Sunday to Thursday, inclusive, with rest days Friday and Saturday, and relief furnished for the position on Friday only, effective September 1, 1949, which was the effective date of the forty-hour work agreement. Since no relief was provided for the position on Saturday, the seventh day, it is the employe's position that the service operations of the position are required to be performed six days each week only; that the position is therefore a six-day position and that the rest days must be either Saturday and Sunday or Sunday and Monday. Wherefore, claim is made for compensation for each Friday upon which he should have been permitted to work and was denied the right so to do at pro rata rate, and for each Sunday he was required to perform service at time and one-half rate, in lieu of the straight time rate paid him.

Carrier contends that Claimant's assignment is a seven-day position, for the reason that the operations at the Salt Lake City terminal, where Claimant is assigned, are necessary to be performed seven days a week, and the designation of Friday and Saturday as rest days is proper.

It is not sufficient that Carrier's operations are performed seven days a week. It must appear that the operations in which Claimant is engaged are necessary to be performed seven days a week, and it does so appear. It is not disputed that prior to the effective date of the forty-hour agreement the operational requirements of the Carrier were such that express handlers, including Claimant, were assigned to a work week of forty-eight hours consisting of six-days of eight hours each, with one day of rest, holding assignments termed seven-day positions in continuous operation of the Carrier, and being relieved on the seventh day. There is no suggestion of change in the amount or nature of the traffic or of seasonal fluctuation since that time. The forty-hour week agreement specifically provides, that the expressions "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. Under such provision, it is plain that Claimants express handler position is a seven-day position and the agreement has several times been so construed. As said by Referee Carter, in Award 5555, Third Division, "The plain meaning of the rule is that a position is a five, six or seven day position, if the service, duties, or operations necessary to be performed are necessary to be done five, six, or seven days a week, as the case may be."

Employees insist that even though it might be considered a seven day position because of the continuous operations necessary to be performed, nevertheless Claimant's position is not a seven day position for the reason that, since the provision of a second rest day, no relief was provided for the position on the seventh day; therefore, the duties of the position are required to be performed on six days only, and under Rule 45-A(c) of the agreement it becomes a six day position. That rule provides: "Six-day Positions. Where the nature of the work is such that employees will be needed six days each

week, the rest days will be either Saturday and Sunday or Sunday and Monday." We cannot agree with such interpretation. In Claimant's case, the nature of the work is not such that employees will be needed only six days each week, but apparently the amount of the work is such that Carrier finds it unnecessary to relieve both rest days of every employee, although the service, duties and operations which Claimant performs are necessary to be performed seven days each week.

Rule 45-A(e) 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 or combinations thereof, * * *." The requirement is for relief assignments "to do the work necessary on rest days" in six and seven-day service. It is not a requirement to establish relief assignments for all rest days. As said by the Second Division, Referee Wenke participating, in Award 1565, "There is nothing in the agreement making the establishment of relief positions to cover rest days a condition precedent. The one is not conditioned on the other. Just so long as the status of the operations to which claimant is assigned remains unchanged and the need for employees seven days a week to perform the duties and services of such operations continues the rest days can be assigned accordingly." Of like import is Award 1528, of the Second Division, with Referee Parker participating; Award 5545, of this Division, with Referee Elson; Award 5590, of this Division, with Referee Robertson, and Award 6075, of this Division, with Referee Begley.

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 12th day of June, 1953.