

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violates the current Clerks' Agreement when it assigns or permits an employe, who has established no seniority rights, to perform rest day relief work on Position No. 389, Dallas, Texas; and,

(b) The senior qualified and available off-in-force-reduction employe who would otherwise not have forty hours that week shall be paid eight hours at pro rata rate of Position No. 389 for each Saturday from September 1, 1949, until the violation is corrected; if no such off-in-force-reduction employe available, then C. S. Wiedo, C. L. Pope and/or other regular occupants of Position No. 389 shall be paid eight hours at overtime rate for each Saturday from September 1, 1949, until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the regular assigned incumbent of Messenger Position No. 389, Station Service, Dallas, Texas, was assigned 7:00 A. M. to 4:00 P. M., six days per week, Monday through Saturday, rest day Sunday. Effective with the inauguration of the 40-Hour Week, September 1, 1949, the regular assigned incumbent of this six-day per week position was assigned 7:00 A. M. to 4:00 P. M., five days per week, Monday through Friday, rest days Saturday and Sunday. The position in question was a six day position within the meaning of the 40-Hour Work Week Agreement for the reason that the nature of the work was such that employes were needed to protect it six days each week. So far as the employes have been able to develop there were no off-in-force-reduction employes available and instead of utilizing the regular employe or including the Saturday rest day service in a regular assigned relief position as required by agreement rules, Carrier began the practice of using employes who had not established any seniority rights under the agreement to perform the Saturday rest day service on this position. As a matter of fact, a different employe was used on practically every Saturday during the period September 1, 1949, to July 5, 1950, on which latter date the Saturday rest day service required on this six day position was bulletined and included in Swing Relief Position No. 23, thus ending the violation complained of as of that date.

pro rata rate. This principle is established by Third Division Awards 3193, 3504, 4038, 4934, 5200 and many others.

The rules cited by the Employees and relied upon by them in support of their claim are:

Article III, Sections 1-a, 2, 3, 4, 8-a, 13-b

Article VI, Section 10-h

Article VII, Sections 1-e and 1-f.

The rules cited under Article III, deal with seniority districts, establishment of seniority, promotion, exercise of seniority, filling vacancies and new positions and status of employees unable to exercise seniority rights in abolishment of positions or force reduction. An analysis of these rules will show that the Carrier has fulfilled the requirement of each of the rules cited, and that they do not support the Employees' claim.

CONCLUSION

In conclusion, the Carrier submits that the claim of the Employees is without support under the current Clerks' Agreement and should be denied for the following reasons:

- (1) The Board is without authority to accept jurisdiction of this dispute while it is pending before the 40-Hour Week Committee.
- (2) There is no rule in the Clerks' Agreement that supports their position.

The Carrier is uninformed with regard to the arguments the employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude is necessary in reply to the Employees' ex parte submission and any subsequent oral arguments and briefs they may present in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Prior to September 1, 1949, the position here involved was assigned six days per week, Monday through Saturday, with Sunday as rest day. With the advent of the 40-Hour Week the position was reduced to a five-day assignment with Saturday and Sunday as rest days. Operational demands required that the position be worked on Saturdays and during the period from September 1, 1949, through June 24, 1950, the position was filled five times by the regular incumbent at punitive rate, three times by the clerks who had previously held regular assignments and had been cut off-in-force-reduction, and 34 times by available clerks who had held no regular assigned positions.

We are asked to consider the applicability of the following Rules: Article VII, Section 1-e, Article III, Section 2, and the Letter of Understanding of December 12, 1942.

It is the contention of the Organization that on the 34 Saturdays in question the work performed was not a part of any assignment and that Article VII, Section 1-e, required that such work be performed by qualified off-in-force-reduction employees if such were available, and that since no such off-in-force-reduction employees were available, said Rule required the Carrier to utilize the regular employees of the position and to compensate them at their time and one-half rates.

The Carrier's first proposition is that the issue here presented is involved in a pending submission to the 40-Hour Week Committee in which the Carrier has requested a cancellation of the Letter of Understanding of December 12, 1942, and that this Board is, therefore, without jurisdiction to render a decision in the instant case. This requires consideration of this matter in advance of a decision on the merits.

The 40-Hour Week Committee is given power, when its jurisdiction is properly invoked, to resolve disputes between the parties in connection with the revision of individual agreements so as to make them conform to the 40-Hour Agreement, and the decisions of the Committee, when rendered, are effective as of September 1, 1949. The question which the parties have jointly submitted to the 40-Hour Week Committee has been identified as follows: "The Parties are in disagreement as to whether the Letter Agreement of December 12, 1942 . . . is required to be cancelled and Section (2) of the current agreement effective October 1, 1942, applied as it is written." The Carrier is urging the cancellation of said Letter of Understanding and it asserts that if such cancellation results (retroactive to September 1, 1949) its conduct with respect to the subject matter of the present controversy will clearly appear to have been within its contractual obligations.

Manifestly, this Board is in no position to interpret and apply the Agreement until the 40-Hour Week Committee decides what provisions thereof are in effect and what have been abrogated. The first step ought to be to settle that issue and considerations of comity would seem to dictate that we should do nothing in the meanwhile calculated to further complicate a matter that is already sufficiently confused. The Claim should be dismissed without prejudice to the right of either party to have it resubmitted at the proper time.

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 this Board should not entertain the Claim pending consideration of the matters in dispute which have been jointly submitted by the parties to the 40-Hour Week Committee.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of August, 1953.