Award No. 6856
Docket No. CL-6732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the rules of the Clerks' Agreement at Hornell, New York, when during the week of August 12, 1952, the Carrier arbitrarily established seven (7) day operation at its freight transfer platform when no seven (7) day operation was in effect prior to September 1, 1949, and that Employes:

G. Eastman
M. C. Merks
L. Baisch
J. A. Kelly
S. Poklinkowski
A. Davis
A. Renwand
R. H. Hilborn
A. J. Clair
N. Barril
C. E. Butler
A. A. Duke
F. E. Morey, Jr.
J. Gowiski
J. R. Brocks
H. Beyea
G. S. Aurerbier
H. G. Collins, Jr.
R. N. Prounty
F. Schwartz
W. F. Frantz
H. Rose
J. Dill
A. Petrill
R. J. New
J. Alexin
J. Sanford
M. Aini
L. McKnight
W. L. Hobson
J. Graff
A. J. Guzzetta
H. Calkins
E. J. Hill
F. Henry
R. Severance
H. VanCuren
N. B. Benson
J. D. Allison
L. E. Soreine
J. C. Canty
R. J. Hess
L. Feenaughty
L. C. Palmer
N. A. Butler
W. L. Miller
R. S. O'Neill
J. A. Hobson
G. E. Blake
E. Eicher
F. E. Bigelow
H. Kiehle
J. Genneralli
L. G. Gross
C. Pawlsk
R. Wood
E. McKibben
W. Randall
E. L. Kinner
C. Rex
H. L. George
T. J. Booth
M. McCrea
J. H. Nunn
L. Terwilliger
D. Fennaughty
H. Millikin
R. L. Wilson
W. A. Jones
A. B. Lyke
L. E. Benson
C. A. Meter
D. Andrezzi
R. M. Ordway
E. J. Houghtaling
P. Sheehan
J. J. Giglio
P. J. Piyak
E. Headley
M. Pinnell
O. D. Smith
H. G. Collins, Sr.
J. D. Mann
J. M. Pelych
C. L. Elliott
J. Thomas
C. J. Millner
C. E. Squirew
E. Barach
R. Kneale
H. C. Brownell
N. Cianciosi
E. J. Allen
O. Bash
K. Jackson
C. H. Cline
J. A. Bash
L. Sackett
R. J. Hess
H. LaVarnway
E. J. Treat
J. Kinney
L. F. Carnes
S. Daniels
C. A. Lockwood
J. Falzarino
G. R. Mazzella
James Aprea
R. A. Brooks
F. E. Donnelly
H. Miller
J. McCarthy
L. J. Emerson
R. G. Shaw
G. D. Generalli
H. Kline
H. Sutton
C. F. Coogan
V. Speers

required to perform service on Saturday and Sunday or Sunday and Monday, effective August 24, 1952, and all subsequent Saturdays and Sundays or Sundays and Mondays, shall be paid time and one-half for such service, and,

That the Employes rquired to work Saturday and Sunday or Sunday and Monday shall be allowed an additional day at pro rata rate of position worked for each day off duty other than Saturday and Sunday or Sunday and Monday in any or all work weeks worked, retroactive to August 18, 1952, and,

That any and all employes adversely affected shall be paid in accordance with the preceding paragraphs from August 18, 1952, until such time as the violation complained of has been corrected.

EMPLOYES' STATEMENT OF FACTS: Effective July 1, 1948, it was mutually agreed that Hornell Transfer, Hornell, New York, would work six (6) days per week, Monday through Saturday, with Sunday as the regularly assigned rest day for all employes. Effective September 1, 1949, the forty hour week agreement became effective and Hornell Transfer and Platform was established as a six-day operation with a staggered work week. Regularly assigned employes were given rest days of Saturday and Sunday or Sunday and Monday. At the time these changes were made, Hornell Transfer was open appproximately nine (9) hours a day during day time hours.

Effective April 17, 1950, the operation was changed from a daylight operation to a night opteration with employes starting work at approximately 10:45 P. M. and 11 P. M.

As a result of the closing of Croxton Transfer, Croxton, New Jersey, the diversion of 60% of the tonnage to Hornell Transfer, Hornell, New York, and the diversion of 40% of the tonnage from Louisiana Street Station, Buffalo, New York, to Hornell, Transfer, Hornell, New York, effective August 1, 1952, the tonnage handled at Hornell Transfer increased materially. Because of the night operation the Carrier was compelled to work many employes overtime and on their rest days.

Effective August 18, 1952, coincident with a change from night operation back to day operation, the Carrier arbitrarily changed the transfer operation from a staggered six (6) day Monday through Saturday to a seven (7) day operation. This resulted in positions being changed from six (6) day to seven (7) day positions. Regularly assigned employes were assigned two rest days in seven (7) other than Saturday and Sunday or Sunday and Monday. Prior to August 18, 1952, all employes' rest days were either Saturday and Sunday or Sunday and Monday.

Hornell Transfer was on a six day basis continuously from July 1, 1948 until August 18, 1952, when the tranfser was arbitrarily changed from a six to a seven-day operation.

POSITION OF EMPLOYES: This claim primarily involves the application of Rule 20, Day's Work, Work Week-Overtime Rule, Rule 21 Absorbing Overtime Rule, Rule 23, Platform Roster B, Rule 25 Notified and Called Rule 55, Effective Date and Changes Rule of our current agreement with the Carrier, revised July 1, 1945, amended July 20, 1949, and subsequent amendments, printed copies of which are on file with your Honorable Board and said rules as well as those not specifically cited herein, contained in the Agreement, are to be considered as if filed as a part of this submission.

Rule 20, referred to above, is the Day's Work, Work Week, Overtime Rule and provides what constitutes a Day's Work, how five, six or seven day positions shall be assigned and how overtime rates of pay shall be computed and other benefits. The particular feature of this rule that is here involved are set forth in Rule 20-2 and Rule 20 3(e) and (f) which portions of the rule are quoted here for the benefit of the Board.

RULE 20-2 WORK WEEK

The Carrier has shown that seven-day service is essential to its functions as a common carrier. The best evidence of this fact is the large overtime payments made to employes for Saturday and Sunday work in order to maintain L. C. L. schedules.'

As set forth above, the Employes have not even contended that this Sunday work is not necessary, consequently, there can be no serious contention that the Carrier has violated any agreement rules by assigning the claimants to seven-day positions on staggered work week basis. In fact, the rules specifically provide for seven-day positions if work is necessary to be performed seven days per week.

In Second Division Award 1644, Referee Edward F. Carter, assisting, the Board held:

> "The burden is upon the employes to show that the carrier misapplied the agreement in establishing seven-day positions at Fort Worth for the employes assigned to the work of making running repairs on cars coming into that point. Awards 1599, 1617, Second Division; Awards 5555, 5556, 5557, Third Division. This it has failed to do by the greater weight of the evidence. We necessarily conclude that the assignments in question were properly made and that a denial award is in order."

To the same effect are Awards 1645 to 1655, inclusive and 1669.

It is submitted, therefore, that this claim should be denied. All of the information herein has been discussed with or is known to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim on behalf of a large number of employes (119) that Carrier violated the current Clerks' Agreement when on or about August 18, 1952, it established a seven day operation at its freight transfer platform at Hornell, New York, when the operation was in fact a six day operation under the controlling agreement. The claim is for wage adjustments and penalties resulting from the alleged violation.

The record shows that on August 1, 1948, this freight station was operated six days a week. On September 1, 1949, the effective date of the 40-Hour Week Agreement, the freight station was operated as a six day operation with staggered work assignments of Monday through Friday and Tuesday through Saturday. On April 17, 1950, the whole operation at the freight station was changed from a daytime to a nighttime operation. The nighttime operation continued until August 18, 1952, when it was changed back to a daytime operation and placed on a seven-day basis.

The freight transfer station is used to receive and deliver freight to local patrons and to transfer freight to and from other carriers, the latter utilization being the primary one. In order to expedite the handling of westbound LCL tonnage, the Carrier on July 1, 1952, transferred 41 per cent of the tonnage handled at Buffalo, New York, to Hornell. On August 1, 1952, 60 per cent of the tonnage handled at Croxton, New Jersey, was transferred to Hornell. These two changes in operation increased the tonnage handled at Hornell about 50 per cent. The Carrier asserts that the work piled up,—82 cars were diverted to Jamestown, New York, and Akron, Ohio, for handling; 296 cars were delayed 24 hours and the 82 diverted cars were delayed 48 hours. Because of the inability of the Carrier to employ sufficient men to work at night, Carrier on August 18, 1952, returned the operation to day service and in order to avoid delays in the transfer of this LCL tonnage, Carrier set up a seven day operation. The record shows that the maximum operation at Hornell consisted of 17 four-man gangs at any one time. In order to obtain a greater expansion of the work with available facilities and to secure a more prompt movement of Saturday arrivals in oder to meet competition the Carrier deemed it necessary to extend the work to a seven day operation.

The record is long and the evidence extensive concerning the necessity of changing the operation at the Hornell freight transfer platform from a six day to a seven day operation. We conclude from the evidence that the change was necessary for the following reasons: The LCL freight at that point had materially increased. Delay to freight arriving late in the week could be avoided. Extended use of limited facilities could be had. The prompt handling of freight would meet competitive practices and retain the business for the Carrier. It would help maintain freight schedules and the service which shippers desired. The expedition of its freight service would attract new business. These reasons, and others as well, sustain the need for the change to a seven day operation.

The Organization asserts, however, that as the operation was a six day one before the 40-Hour Week Agreement went into effect on September 1, 1949, it cannot be changed to a seven day operation thereafter. This is a misconstruction of the 40-Hour Week Agreement.

The applicable rules are:

> "On positions which have been filled seven (7) days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday." Rule 20-2 (d), current Agreement.

> "Existing provisions that punitive rates will be paid for Sundays as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949 with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sundays. The intent is to recognize that the number of people on necessary Sunday work may change." Rule 30 (a), current Agreement.

In the drafting of the 40-Hour Week Agreement, provisions were made for a staggered work week in six and seven day service to meet operational requirements. The continuous nature of some railroad operations was in the minds of the drafters. It was fully realized that some Sunday work had to be performed which could and would vary with changing operating conditions. It was plainly stated that a rigid adherence to the precise pattern existing immediately prior to September 1, 1949, was not to be expected. Its overall purpose was, however, to limit Sunday work to that which was necessary to be performed but not to freeze the existing situation at any given time.

This Board has held that seven-day positions can be created even though the work was not so assigned prior to September 1, 1949, if such work is necessary to be performed on Sundays. Awards 1566, 1599, 1644, 1669, 1712, 1714, Second Division; 5247, 6018, Third Division. The non-performance of the work on Sunday prior to September 1, 1949, constitutes strong evidence that it was not required after that date. The Agreement does not prohibit the assignment of the work on Sunday after September 1, 1949, although not so assigned prior thereto. The proof, however, must be sufficient to overcome the presumption that it was not necessary to be performed on Sunday because of the fact that it was not so performed prior to the 40-Hour Week Agreement. Award 1644, Second Division.

The Organization contends that need for Sunday work did not exist within the meaning of the rule. It is the duty of a carrier to conduct the operation of a railroad in such a manner as to provide efficient, economical and satisfactory service to the shipping and traveling public. If Sunday work is reasonably required to maintain that kind of service, then Sunday work is necessary within the meaning of the 40-Hour Week Agreement. And if the

Sunday work is necessary, Carrier is clearly entitled to have it performed at the pro rata rate if regular assignments are properly made to cover it.

The Organization relies heavily on the reasoning contained in Award 6695 and the experience of its author in the negotiations leading up to the 40-Hour Week Agreement. Space will not permit an extended discussion of this award. Suffice it to say that the result is grounded on the wording of Article II, Sec. 1 (d), of the agreement effective September 1, 1949, (40-Hour Work Week), which 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."

Award 6695 construes this to mean that seven day positions which did not exist prior to September 1, 1949, can be established thereafter only by negotiation. The language of the award is: "Obviously the operational requirements here referred to do not mean such requirements as the Carrier may think desirable, efficient or preferable, but they refer to the requirements specified in the three paragraphs immediately following paragraph 35 (a), namely: (b) the requirements which can be met in five days; (c) the requirements where employes are needed six days a week; and (d) where positions have been filled seven days per week **prior to September 1, 1949.**" The underlined clause does not appear in the corresponding provision of the 40-Hour Week Agreement. We point out that these provisions were classifying five, six and seven day positions and no intent appears that one was to be construed any differently than the others. But even if one might undertake to give effect to the change in language contained in (d), it is entirely dissipated by the language of (j) in the same section where it is stated: "On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change." The word "necessary" in the sentence last quoted affords the key to the meaning of the language here being considered. It is a fundamental rule of contract construction that the various sections of an agreement are to be construed together and that the language of isolated provisions must be considered in connection with other pertinent provisions of the contract. So construed, the interpretations contained in Awards 1566, 1599, 1644, 1669, 1712, 1714, Second Division, points the way in this type of case. It will be noted that Award 6695 distinguishes but does not criticize or override the last cited awards.

The Organization urges that Award 6695 should be followed becausse the referee in that dispute, and the author of the award, participated in the drafting of the 40-Hour Week Agreement and was used as an arbitrator to determine the meaning of certain rules incorporated therein. We do not think that this is a matter to be considered here. It is presumed that all of the contentions and arguments of the parties are merged in the written agreement. A party is not permitted to go behind his written agreement and offer special knowledge on the intent of plain provisions. It is conclusively presumed that all such matters were considered and incorporated in or left out of the agreement to the extent that the written contract shows. The integrity of written agreements requires that they be so construed. The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. We cannot subscribe to the view that the meaning of the 40-Hour Week Agreement can anywise be affected by

the private knowledge of the party construing it as to its intended meaning. The terms of the written agreement must prevail.

The Organization also contends that the Carrier brought the necessity for Sunday work upon itself by diverting LCL traffic from Croxton and Buffalo to Hornell. The method of handling freight shipments is peculiarly the prerogative of management. It was clearly its privilege to make the diversions that it did in the furtherance of its managerial judgment. If the fact that some act of the Carrier intervened to produce the conditions making a seven day operation necessary was a bar to so doing, there could seldom be such a change made. The agreement is not subject to such a construction unless the only purpose of the Carrier was to circumvent the agreement.

We hold that the Carrier has produced evidence tending to show that a seven-day operation was necessary which is sufficient to overcome the presumption arising from the fact that it was a six-day operation immediately prior to September 1, 1949. The Organization has failed to produce evidence to overcome that of the Carrier. We must conclude therefore that the seven-day operation was necessary, that the installing of the seven-day operation was not violative of the agreement, and that no basis exists for an affirmative award.

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 Employes 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 28th day of January, 1955.