

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS**

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

- (1) That the Carrier violated the agreement when it assigned Crossing Watchman J. H. Marshall to regularly work four days a week relieving two other crossing watchmen on their respective designated rest days;
- (2) That J. H. Marshall be allowed one day's pay at his straight time rate for each work week in which he is not permitted to work five days.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. H. Marshall has been employed as a crossing watchman at Pine Bluff, Arkansas since July, 1946 and prior to June 1, 1951 was regularly assigned to work five days per week.

Prior to June 1, 1951, manual crossing protection was afforded at a number of crossings in Pine Bluff, among them being Maine Street, Pine Street, Walnut Street and Chestnut Street, each crossing requiring individual attention. The Carrier, however, consolidated the crossing protection, wherein the crossing protection facilities of each crossing were activated and controlled from a central point located at Pine Street. Furthermore, the Carrier was no longer required to furnish manual protection for 24 hours daily, but was thereafter required to furnish such protection for 16 hours daily from 6:00 A. M. to 10:00 P. M.

The Carrier, therefore, abolished the crossing watchmen's positions at Pine Bluff, Arkansas and in lieu thereof, established one position of crossing watchman to work Tuesdays through Saturdays, from 6:00 A. M. to 2:00 P. M., with rest days regularly designated as Sundays and Mondays. A second position was also established to work from 2:00 P. M. to 10:00 P. M. on Thursdays through Mondays, with rest days regularly designated as Tuesdays and Wednesdays.

In order to provide the required crossing protection on the regularly designated rest days hereinbefore referred to, the claimant was given standing instructions to regularly report at Pine Street at 6:00 A. M. on each Sunday

violation of the claim by the Carrier was in May, 1951, and followed in conference June 6, 1951. **We do not propose to allow the penalty prior to the time that the Carrier had notice of the violation.**" (Emphasis supplied.)

Under the circumstances, in this dispute, however, Carrier submits that the claim is not supported by the agreed rules, is not valid for any reason, and is entirely without merit. Therefore, Carrier respectfully requests that the claim be denied in full.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 27, 1951, there were two seven-day crossing watchmen positions at Pine Bluff, Arkansas. Such positions are filled by two regular five-day assignments which have four unassigned tag end days to be filled. Claimant is used to perform the work of the two rest days of each position. He therefore works Sundays and Mondays, 6:00 A.M. to 2:00 P.M. and Tuesdays and Wednesdays, 2:00 P.M. to 10:00 P.M. The Organization contends that the position is a regular relief position and that the Agreement was violated when the position was not filled five days a week.

Claimant is an incapacitated section laborer. The rules governing promotions and seniority do not apply to crossing watchmen. Rule 5-8, current Agreement. We here take note of the fact that the 40-Hour Work Week Agreement differentiates between an extra man and an unassigned employee. Claimant was working as an extra man on the four rest days here involved. The Organization contends that the use of claimant regularly to perform the rest day work makes him a regularly assigned relief employee. Without considerations of seniority, the two regular five-day assignments were filled. No question is raised concerning these two assignments. Claimant was used as an extra employee to work the four rest days, and seniority rules not being applicable, he was permitted to work these rest days regularly. This is in accord with applicable rules. Award 5463, Third Division; Award 1824, Second Division. It is work on unassigned days covered by Rule 7-8.

The Organization contends that a five-day regular relief assignment should have been made in compliance with that part of Rule 7-2(e) providing "or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement." There was no other work on other days that could be assigned under the Agreement. This provision, however, is permissive and not mandatory in any event. See Award 5558. Claimant was an incapacitated employee who was used as a crossing watchman for that very reason. We could not very well say that Carrier must assign an incapacitated employee to work which he was unable to perform. Awards 5463, 5558, 6216, 6259, 6946.

The Organization contends that claimant must be assigned five eight-hour days each week under Rule 7-12, a rule dealing with intermittent service. The rule applies to regularly assigned employees and has no relation to extra men. The term "assigned hours" as used in the rule clearly implies a regular assigned work week. See Award 5463.

We can find no basis 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 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 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 29th day of April, 1955.