Award No. 7320
Docket No. CL-7580

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes—

(1) That the Carrier violated the Clerks' Agreement, effective February 1, 1952, when it changed the rest day of Crew Caller V. C. Waddoups, Milford, Utah, effective March 29, 1954 from Tuesdays and Wednesdays to Saturdays and Sundays, necessitating his working his sixth and seventh days, and did not compensate him at punitive rate of pay, as provided for in the Clerks' Agreement.

(2) That the Carrier shall be required to compensate Crew Caller V. C. Waddoups, for the difference in straight time rate and punitive rate for March 30th and 31st, 1954, which were his sixth and seventh days worked.

EMPLOYES' STATEMENT OF FACTS: V. C. Waddoups is regularly assigned to position of Crew Caller, Milford, Utah, and prior to March 29th, he was assigned to a work week of Thursday through Monday with Tuesday and Wednesday as his designated rest days. On March 23, 1954 Waddoups was notified, that effective at close of business March 25, 1954 the assigned rest days would be Saturday and Sunday instead of Tuesday and Wednesday.

Under Rule 41(I) Waddoups' work week began on Thursday, March 25th, and terminated on Wednesday March 31st, or seven days from the beginning of the first day on which his assignment was bulletined to work.

Compensation at punitive rate of pay was claimed, under date of June 9th in letter from Division Chairman Karl S. Little to Division Superintendent Groome (Employes Exhibit No. 1) and following Carrier's declination by Supervisor of Wage Schedules—N. B. Beckley, his letter of June 22nd to Division Chairman Little, (Employes Exhibit No. 2) the General Chairman appealed to the Assistant to Vice President on June 30th, (Employes Exhibit No. 3).

The General Chairman discussed in conference with the Assistant to Vice President on July 15th, and on July 29th, the Assistant to Vice President declined the claim (Employes Exhibit No. 4).

It follows that Claimant does not qualify under the provisions cited by the Organization for payment sought because he did not perform work in excess of five days or forty hours in any work week.

It follows that under the clear language of the agreement provisions involved, the claim in this docket must be denied. Claimant would be entitled to payment of overtime for the dates involved only if the work resulted in the performance of work in excess of five days or forty straight time hours in any work week.

The record shows conclusively that Claimant **did not in any work week** work in excess of five days or forty straight time hours; neither did he work on the sixth and seventh days of any work week.

He is not, therefore, entitled to the payment sought.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to March 29, 1954, Claimant V. C. Waddoups was regularly assigned to and occupied the position of crew caller at Milford, Utah, with hours from 11:59 P. M. to 7:59 A. M. His work week was Thursday through Monday, with Tuesday and Wednesday as rest days.

At 7:59 A. M., Sunday, March 28, 1954, Carrier gave notice in writing to Claimant that commencing with the shift beginning at 11:59 P. M., Monday, March 29, 1954, the rest days of the assignment would be changed to Saturday and Sunday, giving the position a work week of Monday through Friday. Claimant worked Thursday, March 25; Friday, March 26; Saturday, March 27; Sunday, March 28. The 36 hour notice required by Rule 41(k) became effective at 7:59 P. M., March 29, 1954. Since adequate notice of the change in rest days was had before the beginning of Claimant's new work week commencing at 11:59, Monday, March 29, 1954, the new work week commenced at the latter hour. Since Monday, March 29, 1954, was the first day of the new work week, Tuesday, March 30; Wednesday, March 31; Thursday, April 1; and Friday, April 2; were the remaining work days of his new work week. Saturday and Sunday, April 3 and 4, were his new rest days and he did not work on those days. He thereafter worked in accordance with the new work week. It is here claimed that when Claimant was required to work on Tuesday and Wednesday, March 30 and 31, he was working the sixth and seventh days of his work week and that he should have been paid the rest day rate. The claim is for the difference between the pro rata rate which he was paid and the time and one-half rate for those days. The decision is controlled by Award 7319.

We point out that the order changing Claimant's rest days became effective at 7:59 P. M. on Monday, March 29, 1954. The new work week began on Monday, March 29, 1954 at 11:59 P. M. It is clear, therefore, that Tuesday and Wednesday, March 30 and 31, were work days in the new work week commencing on Monday, March 29, at 11:59 P. M. The days claimed to be rest days are not such. This is the only issue raised by the claim and the only issue we here decide. No other rules of agreement are involved. They are in fact work days in the new work week and Claimant is entitled to the pro rata rate for working those days. See Award 7319.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May, 1956.

SPECIAL CONCURRENCE TO AWARD NO. 7320, DOCKET NO. CL-7580

The denial of the claim in this dispute is founded on the premise that the Carrier, in changing the assigned rest days of Claimant's prior assigned work week, concurrently changed the work week so that the change in rest days became effective on the 6th and 7th days of the newly assigned work week. The Opinion holds:

> "* * * The new work week began on Monday, March 29, 1954 at 11:59 P. M. It is clear, therefore, that Tuesday and Wednesday, March 30 and 31, were work days in the new work week commencing on Monday, March 29, at 11:59 P. M. The days claimed to be rest days are not such. * * *."

The Carrier Members concur in the Findings in this Award which stipulate:

> "That the Agreement was not violated"

for the simple reason that Rule 41(j) of the current Agreement controls.

We dissent, however, to that portion of the Opinion which stipulates:

> "The decision is controlled by Award 7319."

We, as Carrier Members, dissent to the applicability of Award 7319 to this case; therefore, our dissent to Award 7319 is made a part of and is to be considered as applying also to this Award (No. 7320).

/s/ C. P. Dugan
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp
/s/ J. F. Mullen