

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Francis B. Murphy, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) Carrier violated the agreement when it denied the employees assigned to Section 5 the right to work on October 3, 1953.

(2) That each of the employees assigned to Section 5 on October 3, 1953 be allowed 8 hours pay at their respective pro rata rate account of the violation referred to in Part 1 of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Effective September 1, 1949, one Section Gang in each of six Main Line Terminals were, by Agreement between the two parties to this dispute, assigned a work-week of Tuesday through Saturday, with Sundays and Mondays as designated rest days.

Under date of September 29, 1953, the parties agreed to terminate the Tuesday through Saturday work-week for the six section gangs above referred to and that such crews would thereafter work Monday through Friday with Saturday and Sunday as rest days.

In effectuating the transitions from a Tuesday through Saturday work-week to a Monday through Friday work-week for the six above-referred to Section Gangs, five of the gangs were instructed to make the transition without loss of any work days in the last work-week of the Tuesday through Saturday assignment.

However, the sixth Section Gang, namely Section No. 5 at Galesburg, Illinois were required to suspend work on Saturday, October 3, 1953, the last work day of their last Tuesday through Saturday assignment, thereby causing each member of that gang to suffer the loss of one day's pay.

The instant claim was filed and progressed in the usual and customary manner; the Carrier declining to allow the claim.

on claimants' section on October 3, 1953, consequently there is no valid basis for the instant claim.

In conclusion, it should be remembered that claimants lost nothing as a result of the change in rest days. They worked exactly the same number of days that they would have worked had their rest days not been changed, and they received exactly the same compensation they would have received had the change not been made. There is no provision in the agreement, nor even in equity, to require the Carrier to pay a penalty when rest days are changed. The change in rest days in this case was made in conformity with the agreement rules cited in this submission, both as to the necessity for making the change, and as to the sufficiency of advance notice prior to the effective date of the change. The awards cited herein clearly support Carrier's position. There can be no decision except denial of the claim in its entirety.

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The Carrier affirmatively states that all data herein and herewith submitted has been previously submitted to the employees.

\* \* \* \* \*

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimants in this case held positions in Section 5, which is on Carrier's Galesburg, Illinois Terminal, and were assigned a work week Tuesday through Saturday with Sunday and Monday as regular days off. On Tuesday, September 29, 1953, Claimants were notified that, effective Thursday, October 1, 1953, the days off assigned their positions in Section 5 would be changed from Sunday and Monday to Saturday and Sunday. The Organization contends that this is in violation of the Agreement between the parties and particularly of Rule 32 (i) of that Agreement, this Rule being a part of the National 40-Hour Week Agreement which became effective September 1, 1949.

The Agreement between the parties states:

"Rule 32. (a) The Carrier will establish, subject to agreed upon exceptions, a work week of 40 hours, consisting of five days of eight hours each with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this agreement which follow:

"\* \* \*

"(i) Beginning of Work Week. The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

Agreement to terminate the Tuesday through Saturday work-week in favor of a Monday through Friday work-week was arranged through correspondence between the Carrier and the Organization. The agreed change affected one Section Gang in each of six Main Line Terminals.

Five of the gangs were instructed to work the Saturday and the sixth gang, namely Section 5 at Galesburg, Illinois, were not permitted to work on Saturday, October 3, 1953, the last work day of their last Tuesday through Saturday assignment.

Carrier's representative addressed the General Chairman on September 29, 1953 and stated: "This will acknowledge receipt of your letter of September 25, file 35-2, wherein you advise that you have received information to the effect that the assignment of one Section Crew in each of the six Main Line Terminals who, under the provisions of the letter of Agreement of July 20, 1949 were permitted to work on a Tuesday through Saturday basis, would be terminated and hereafter such crews will work Monday through Friday, with Saturday and Sunday as rest days. The information furnished you is correct." This letter was signed by G. M. Youhn and was the "written confirmation of this reassignment" as requested to complete the agreement required.

In line with the above letters which indicate that the changes in the assignment were not contemplated until the following week when the new assignment would become effective, we feel that the Carrier should have permitted Section No. 5 to work on Saturday, October 3, 1953 which would have completed their five days of work as provided by Rule 32 (a) as they did the other five gangs.

**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 there was a violation of the Agreement.

#### AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: F. P. Morse  
Acting Secretary

Dated at Chicago, Illinois, this 1st day of October, 1959.

#### DISSENT TO AWARD 8999, DOCKET MW-7951

This Award does nothing but add confusion to a subject which is already fraught with confusion. See our Dissents to Awards 7319, 7324, 8077, 8103,

and others, and Special Concurrences to Awards 7320 and 7719. For these and other reasons, we dissent.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ J. F. Mullen