

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo District)**

STATEMENT OF CLAIM: (a) Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the rules of the Agreement effective September 1, 1922, as modified or revised on various dates including April 1, 1923 and September 1, 1949, particularly Rules 31 and 35(f), Subparagraph One, when on February 20, 1954 Carrier discontinued using W. C. Falk, the incumbent of Position No. 5, Steno-Clerk in the Chief Dispatcher's Office at Toledo, Ohio, for unassigned work on Saturday rest days of Position No. 5, and

(b) That W. C. Falk shall now be compensated for eight (8) hours at punitive rate for Saturday, February 20, 1954, and each subsequent Saturday on which the duties of Position No. 5 were assigned to and performed by the incumbent of Car Distributor Position No. 8.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, as representatives of the class or craft of employees in which the claimant in this case holds a position, hereinafter referred to as the "Brotherhood" and the New York Central Railroad, hereinafter referred to as the "Carrier".

Prior to September 1, 1949, when the Forty Hour Week became effective, positions in the Superintendent's Office were scheduled on a six (6) day per week basis with Sunday rest days. When work was required by the Carrier on such rest days, it was performed by the incumbent of the position involved on an overtime basis in accordance with Rule 30 of the Agreement, or if such employee desired to be off on a designated Sunday, the work was performed on an overtime basis by the senior clerical employee asking for the work.

All evidence and data set forth in this submission have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, W. C. Falk, holder of Position No. 5, Steno-Clerk in the Chief Dispatcher's Office of the Carrier at Toledo, Ohio, was assigned to work six days per week, Monday through Saturday, rest day Sunday. On and after September 1, 1949, the effective date of the 40 Hour Work Week Agreement, and thereafter until February 14, 1954, Mr. Falk continued to work in the same position on a five day work week, Monday through Friday, rest days Saturday and Sunday. During this period Mr. Falk was directed to work on Saturday for which he was paid for time and one-half. On February 14, 1954, the Carrier directed that the work theretofore done by Mr. Falk on Saturdays should thereafter be performed by a Car Distributor, Position No. 8, whose work week was for a five day period, Tuesday through Saturday.

The validity of the action taken by the Carrier on the 14th day of February, 1954, and the operation pursuant thereto, is challenged by the Organization and is the basis for the Claim. Specifically, the Organization asserts that the Carrier by its order violated rules of the controlling Agreement, as originally enacted, and as thereafter modified and amended, particularly Rules 31 and 35(f), sub-paragraph (1). The rules which it is insisted are applicable and have been breached are set up at length in the first ex parte statement of the Organization.

Rule 31 has application to payment for services rendered and will have effect, if it be found that Mr. Falk was denied work to which he was entitled under Rule 35(f) (1) of the Agreement.

The narrow and decisive issue then is whether the Carrier in its order of February 16, 1954, and its operation thereunder, during the period covered by the Claim, violated Rule 35(f) (1) of the Agreement.

The Rule invoked provides:

"35 (f) Relief work not a part of any regular relief assignment and other unassigned work required by the carrier may be performed by extra or furloughed employees who will otherwise not have work on 5 days of that work week; in all other cases by the regular employees in the following order of preference:

"(1) The regular employee, if the work is a part of the service or operation associated with his regular position."

The Organization insists that the rights of Mr. Falk, holder of a regular assignment, arise and are guaranteed under the foregoing rule, which though not in conflict with any provision of the 40 Hour Work Week Agreement, is more specific and must control.

The Carrier contends that there is no violation of Rule 35(f) (1) and that the letter and spirit of the 40 Hour Work Week Agreement have been followed in the action which it has taken.

In our opinion, the position of the Carrier is sound, supported by the great weight of opinions and awards of this Board.

It is developed that the work of service and office operations of the Carrier in the office at the Station involved had materially decreased when the order in question was made. The action taken was within managerial prerogative, in the interest of economical operation and justified, unless specifically prohibited.

The direction of February 14, 1954, assigned to Car Distributor, Position No. 8, on Saturdays, the duties theretofore performed by Mr. Falk on Saturdays, his rest days. Both positions were work weeks of 5 days. When this order was made Mr. Falk no longer had a regular relief assignment, the work on Saturdays, it did not encroach on his regular assignment and it was not unassigned work.

The result desired was accomplished by staggering the work between Mr. Falk and the Car Distributor, Position No. 8, in accordance with the purport of the 40 Hour Work Week Agreement and of Rule 35(a) of the working Agreement between the parties. Rule 35(a) provides that "work weeks may be staggered in accord with the carrier's operational requirements."

It is important to note that both employes involved were of the same craft, in the same district, on the same seniority roll and the Car Distributor was qualified to do the work to be performed within his regularly assigned 5 day period of service.

The opinion of this Board in Award 6946, Carter, Referee, discusses the conditions under which positions may be staggered and the action taken here is consonant with the conclusions there reached. In the foregoing award, it is said:

"If the work necessary to be performed can be done through the expedient of staggering work weeks of regularly assigned employe(s), the necessity for rest day relief day assignments does not exist."

This opinion also discusses Award 6688, which is cited by the Organization. We are content to accept the resolution of the issue as made in Award 6946.

Award 5590, this Board, Robertson, Referee, held that Rule 35(f), the same rule here invoked, did not control the action on the facts there presented and supports the finding and award we make on this submission. Many Awards of this Board are of like import. We cite a few of them: Awards 5555, 6042, 6184, 6602.

The Awards of this Division of the Board are not in complete harmony on the issue here presented but, of those cited in behalf of the Organization in the discussion of the submission, we find but one which cannot be differentiated on the determinative facts. That one is Award 6688, hereinbefore and hereinafter discussed.

We briefly consider all of these Awards, in the order in which they were cited in the discussion.

Award 6023:—Considers a rule of an agreement substantially the same as 35(f), and as we read it, supports the theory we adopt in this submission. The Claim was denied.

Award 6216:—Grounded on a finding that the work involved was assigned to an Agent and a Telegrapher not covered by the Clerks' Agreement, which Craft was entitled to the work.

Award 8286:—Question involved related to admitted overtime work to which it was held Claimant was entitled but which had been assigned to another Clerk and paid for as overtime. The work was not staggered and properly belonged to the Claimant.

Award 5330:—Referee Robertson, who also acted in that capacity in Award 5590, which we have heretofore cited. The Claim was sustained because Claimant was denied a work day in what should have been his 5 day work week position, thus decreasing his work days to 4 per week. It did not involve assignment of relief day work.

Award 6853:—Work involved covered unassigned relief days which properly belonged to a Clerk but instead had been given to a furloughed Brakeman who held no seniority as a Clerk. The Carrier defended principally on the claim that the proceeding followed had been sanctioned by long prior practice. The opinion holds that the work involved could have been staggered but that, if done, Clerks must have been assigned to do it.

Award 6291:—Claim denied because claimant had not shown that he had prior right to be used in both positions for work, in one of which he claimed punitive pay. Not applicable.

Award 6688:—This Award supports the claim of the Organization. It is contrary to most of the awards of this Division on the subject. The minority entered a vigorous dissent. We point out two propositions upon which the option is premised which are at variance with the admitted facts here. We make no comment whether or not they were justified. 1—That the employees involved were of different classes. Here they were of the same class. 2—The work of the Claimant who held a 5 day work week was assigned to a holder of a 6 day work week position. Here both employees involved held 5 work week assignments.

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.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1959.