

Award No. 10786

Docket No. CL-10176

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at the Agent's Office, East Buffalo, N. Y., when it deprived N. A. Scott, Typist, working 1:00 P. M. to 9:30 P. M., of the two days' work, June 15 and 16, 1957, when Carrier reduced his work week from five (5) days to three (3) days and required him to work June 20 and 21, 1957, the rest days of his work week, and

1. That Carrier shall now compensate Norman A. Scott for two days' pay, June 15 and 16, 1957, at pro rata rate of his position, and
2. That Carrier shall now compensate Norman A. Scott the difference between the pro rata rate he was paid and the rate of time and one-half he should have been paid for services rendered on June 20 and 21, 1957 (Claim #1163).

JOINT STATEMENT OF FACTS: Mr. Norman A. Scott held a position of Typist in the Agent's Office at East Buffalo, N. Y., bulletined to work Saturday through Wednesday with rest days Thursday and Friday. The rest days were filled by regularly assigned Relief Clerk.

On June 12, 1957, the Carrier notified Mr. Scott that effective Saturday, June 15, 1957, the rest days of his position would be changed from Thursday and Friday to Saturday and Sunday. No relief to be furnished for Saturday and Sunday.

Mr. Scott did not work on Thursday, June 13, Friday, June 14, Saturday, June 15 and Sunday, June 16, 1957.

POSITION OF EMPLOYES: This claim primarily involves the application of Rule 28 (Guarantee) and 30 (Sunday and Holiday Rule) among other rules of the current Agreement between the parties dated August 1, 1955, 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.

Days worked 7-day period preceding the change and 14 day period subsequent to the change:		Days worked if assignment had not been changed:
16	Sunday R	W
17	Monday W	W
18	Tuesday W	W
19	Wednesday W	W
20	Thursday W	R
21	Friday W	R
22	Saturday R	W
23	Sunday R	W
24	Monday W	W
25	Tuesday W	W
26	Wednesday W	W
27	Thursday W	R
28	Friday W	R

Thus the change in assigned rest days did not cause claimant to work more or less than forty hours in any work week. The number of days in claimant's work week remained the same before and after the change. The claimant lost no compensation.

In any event, the question here presented is neither novel nor unique. This Division of the Board has had the opportunity to decide the same question on three different occasions. Awards 5854 (Daugherty), 5998 (Jasper), 6211 (Shake). See, also, Case No. 14, Special Board of Adjustment No. 136.

In Award 6211, the Board held:

"In the light of the language employed in Rule 3 (c) (Rule 28) and the apparent objective sought to be accomplished by its adoption, we are of the opinion that the work "week" as used in said Rule means a period of seven days, rather than five days. This conclusion is in harmony with the prior awards of this Board. The subject was thoroughly considered in Award 5854, where the Rule involved was substantially like the one here before us and the conclusion was reached that the contention here made by the Organization, under almost identical facts, could not be sustained. This was re-affirmed in Award 5998 and we see no reason for holding otherwise." (Interpolation ours.)

The Carrier has shown that under the applicable agreement rules, as they have been interpreted by this Division of the National Railroad Adjustment Board, the claim herein is without merit and it should, therefore, be denied in its entirety.

All data contained herein have been presented to Claimant's duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: This case comes before us on a Joint Statement of Facts. Claimant held a position of Typist in the Agent's Offices at East

Buffalo, New York, bulletined to work Saturday through Wednesday with rest days Thursday and Friday, the rest days were filled by regularly assigned Relief Clerk.

On June 12, 1957, the Carrier notified the Claimant that effective Saturday, June 15, 1957, the rest days of his position would be changed from Thursday and Friday to Saturday and Sunday. No relief to be furnished for Saturday and Sunday.

The Claimant did not work on Thursday, June 13, Friday June 14, Saturday June 15 and Sunday June 16, 1957.

The employes contend that Claimant's old work week was in effect on June 15 and 16 and Carrier could not start a work week with rest days, as it is contrary to the mandatory provisions of Rule 20-2(i) — Beginning of work week.

“(i) Beginning of Work Week

The term ‘Work Week’ for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes, shall mean a period of seven consecutive days starting with Monday.”

The petitioner alleges in support of the first section of his claim that the change in rest days resulted in the Claimant working less than forty hours in the work week beginning June 15, 1957 in violation of Rule 28, the Guarantee Rule.

This Division was confronted with a very similar case on this same property in Award 7319 (Referee Carter)

“A change in rest days does not have the effect of terminating the old assignment and creating a new one where the occupant does not exercise his seniority. If such were the case the change of rest days would require that the new position be bulletined. This means, also, that the position remains the same irrespective of the change in rest days and consequently there is no moving from one assignment to another. Awards 5586, 5807. The fact that the occupant of the position may exercise his seniority rights after a change in rest days does not appear to affect the situation when the right has not been exercised. We must necessarily come to the conclusion that the Carrier has the right, after notice, to change the rest days of a position and thereby change the work week of the position, but it remains the same assigned position throughout. From this it is argued by the Organization that the guarantee rule applies which in substance states that nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employes below five per week, to which there are exceptions not material here. Consequently, we find that the same assignment exists throughout with rest days properly changed and a guarantee that nothing in the Agreement, which necessarily includes a change in rest days, shall be construed to permit the reduction of days below five a week. It is plain also that if the work week is changed in such a way that there is no violation of the guarantee rule, then the rest day rule may become applicable. ”

In the present case Claimant did not elect to exercise his seniority, and remained on the job, the same as the Claimant in Award 7319.

We quote again from Award 7319.

"The effective date for the change in rest days was February 15, 1954. On that day, the change was made in accordance with Rule 20-3(e) 3. No further change in rest days could be made except in the manner provided by Rule 20-3(e) 3. But the change in work weeks could not take place until the new work week began, which was on Saturday, February 20, 1954. It seems logical to say that as the new work week began on February 20, 1954, the old work week assignment necessarily continues up to that date. If this were not so, we would have one of two contingencies, — an overlapping of work weeks or a void between the close of one work week and the beginning of the new work week resulting from the change in rest days. We are convinced that every day in a regular assignment is in a work week and consequently there can be no void between work weeks. We are also convinced that we should not inject any idea of overlapping work weeks into the rest day rules and thereby further confuse that which is already fraught with uncertainty as to meaning. We conclude, therefore, that upon a change of rest days in accordance with agreement rules, when the occupant elects not to exercise seniority and to remain on the position, it is the first day of the new work week that controls the applicable rules."

The change in rest days resulted in Claimant working less than 40 hours in the work week starting June 15, 1957, thereby depriving him of work on June 15 and 16, resulting in the loss of two days pay. This was a violation of the Agreement and Carrier is required to compensate Claimant for two days pay at pro rata rate of his position.

In regard to part two of the claim, Thursday and Friday June 20 and 21, 1957, became part of the new work week, therefore the pro rata rate paid for service rendered on these two days is correct and Item 2 of the claim must be and is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

- (1) That the Agreement was violated as to Paragraph one of the claim,
- (2) That there was no violation as to Paragraph two of the claim.

AWARD

Claim as to Paragraph one is sustained.

Claim as to Paragraph two — denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962