

Award No. 11706

Docket No. MW-11097

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement beginning on October 21, 1957, when it removed Relief Coal Chute Operator Lawrence Diegelman from his assignment to regularly relieve Coal Chute Operator John Coffman on Saturdays and Sundays and thereafter required Coal Chute Operator John Coffman to perform the Relief Coal Chute Operator's duties on each Saturday and Sunday on a recurring call basis until August 9, 1958 and on a recurring two-call basis on each Saturday and Sunday thereafter.

(2) Relief Coal Chute Operator Lawrence Diegelman be allowed one day's (eight hours) pay for each Saturday and/or Sunday since October 26, 1957 that his relief position has been assigned to and performed by Mr. Coffman on a recurrent call and/or calls basis, claim to continue until the violation is terminated.

EMPLOYEES' STATEMENT OF FACTS: A seven day position of Coal Chute Operator has existed at Trenton, Missouri and has been regularly assigned to Mr. John Coffman.

Effective with the inauguration of the 40-hour work week, Coal Chute Operator John Coffman was assigned to work from 10:30 A.M. to 2:30 P.M. and from 6:00 P.M. to 10:00 P.M. on Mondays through Fridays and his rest days were designated as Saturdays and Sundays.

In order to provide relief on the rest days of Mr. Coffman's position, the Carrier established a relief position, the duties of which were to perform coal chute operator's duties from 10:30 A.M. to 2:30 P.M. and from 6:00 P.M. to 10:00 P.M. on each Saturday and Sunday and to work as a Sectionman on Wednesdays, Thursdays, and Fridays, with rest days designated as Mondays and Tuesdays. Or, as General Roadmaster J. W. Shurtleff advised:

"Investigation develops that Mr. Diegelman did work 2 days per week as relief coal chute operator and 3 days on section to accumulate 5 days per week."

dates and, even if claim had merit, which, of course, we deny, the penalty, if any, for work not performed can only be for hours worked at pro-rata rate.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: Prior to the 40 hour work week agreement the position of Coal Chute Operator at Trenton, Missouri was a seven day position. When the 40 hour work week became effective, the incumbent in that position, John Coffman, was assigned to work 10:30 A.M. to 2:30 P.M. and from 6:00 P.M. to 10:00 P.M. on Mondays through Fridays with rest days on Saturdays and Sundays.

At the same time, a relief position was established which required the employe to work the same hours at Trenton on Saturdays and Sundays and to work as a Sectionman on Wednesdays, Thursdays and Fridays with rest days on Mondays and Tuesdays. Claimant was assigned to this position. He continued to hold that position until October 21, 1957 when Carrier abolished it.

Thereafter, Carrier directed John Coffman, the regular occupant of the position, to protect the work necessary on Saturdays and Sundays. At first, employe Coffman was asked to cover only one call on Saturdays and Sundays. Later his work assignment was increased from time to time until he was "compensated on the basis of two minimum calls each Saturday and Sunday." He received eight hours of pay for each of those days which were his relief days.

Rule 22½ which became effective September 1, 1949 reads, in part, as follows:

"RULE 22½. (Effective 9-1-49) WORK WEEK.

(a) General.

The Carriers will establish effective September 1, 1949 for all employes, subject to the exceptions contained in this agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two consecutive days off in each seven (7); 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 rule which follow.

(b) Five-Day Positions.

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday. (See Memo. No. 19)

* * * * *

(d) Seven-Day Positions.

On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

(e) Regular Relief Assignments.

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work

necessary on rest days of assignments in six or seven day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this Agreement.

Assignments for regular relief positions may, on different days, include different starting times, duties and work locations.

Except as hereinafter provided, relief assignments shall consist of work necessary on rest days on assignments in six or seven day service or combinations thereof in the same class in the same seniority group.

(1) When at a work location there is not sufficient work on rest days to warrant the establishment of a five day relief consisting entirely of work necessary on rest days on assignments in six or seven day service or combinations thereof, relief work on certain days may be combined with such work as may be assigned on other days.

(2) When at a work location there is not sufficient work necessary on rest days in seniority groups 5, 7 and 12 to establish a relief assignment for each group, a relief assignment consisting of work or positions in more than one seniority group may be established.

Example:

At Point 'A' there is a pumper, coal chute foreman and a crossing watchman. There are six relief days. A relief position will be established to relieve the pumper on his two days, the coal chute foreman on his two days, and on one day of the crossing watchman. The other day would be protected by a section man or an extra man.

(3) When there is not sufficient work on rest days in the Groups outlined in paragraph (2) above, relief positions may be established to include section men from Group 9.

Example:

At point 'A' there is a pumper and a crossing watchman. These men will be relieved two days each, making only four relief days. Since there are not enough relief days for a regular relief assignment of five days, a relief position may be established and bulletined to the section located at point 'A' and the section man assigned to that position will be used two days to relieve the pumper, two days to relieve the crossing watchman and one day as a section laborer.

(4) When a relief assignment consisting of positions in more than one seniority group under paragraph (2) above is established, such relief position will be bulletined to employees of all seniority groups in the Maintenance of Way Department on the division or roadmaster territory where the assignment is located and will be assigned to the senior applicant who has the requisite ability to fill such assignment as follows:

First, preference will be given any employe holding seniority in either Group 5, 7 or 12 involved in the assignment and, second, to

the senior employe from any group in a seniority district. An employe assigned to a relief assignment under the provisions of the above Item (2) will not establish seniority in a rank or group in which he has not previously acquired seniority except that when such assignment is filled by an employe who has not established seniority in any rank or group included in such assignment, such employe may establish seniority in the lowest rank in one of the groups included in such assignment and will be required to advise the employing officer in writing within twenty (20) days of the seniority group in which he elects to establish seniority. After such election, such employe will not establish seniority in any other group or rank by reason of filling such relief assignment."

Carrier contends that the facts "place this dispute within the purview of Rule 22½, Item (3) . . ." This rule, the Carrier argues, does not require Carrier to create a relief position where there are fewer than five rest days in a week. "It grants Carrier permission to establish a relief position where there is insufficient rest day work in the groups outlined in Item (3) using Section Men from Group 9."

It will be noted that while Rule 22½ establishes a 5-day week with 2 rest days, it also provides for certain specific exceptions. One of these is Item (3) which is noted above. Item (3), of Rule 22½, specifically says that "relief positions may be established to include section men from Group 9." And then it gives an example which shows that when there are two relief days, a position may be established in which the employe will be used 4 days on a relief position and 1 day as a section laborer. It does not say that the Carrier is obligated or compelled to establish a relief position. The Rule is permissive so that the Carrier may, in its discretion, use an employe in seniority Group 9 to work as a section laborer for part of the 5 days and relieve employes in other seniority groups on their rest days.

While it may be argued that the purpose of Rule 22½ is to give every employe 2 consecutive days of rest in each work week, and, while it may be further argued that the incumbent Coal Chute Operator, John Coffman, is actually working 7 days a week which is contrary to the intent of Rule 22½, nevertheless, the contract specifically says that the work week established in Rule 22½ is subject to the provisions therein set out and one of them is Item (3).

Claimant is a Sectionman and Laborer in Group 9. When he was assigned to relieve the Coal Chute Operator on Saturdays and Sundays, he was also used as a Sectionman on Mondays, Tuesdays and Wednesdays. This is consistent with the permissive provision in Item 3 noted above.

Whatever the equities may be in the case, it is not for the Board to write an agreement between the parties. It is rather the Board's obligation to construe the written Agreement before us. The language in that Agreement is clear, unambiguous and has plain meaning. There is nothing in the record to show that by practice or by custom any other interpretation was given to it by the parties.

In view of the fact that Carrier had the right to abolish the relief position of Coal Chute Operator, Carrier properly paid the incumbent of that position in accordance with the provisions of Rule 24 (e). And further properly called upon the incumbent employe to perform the work in accordance with the provisions of Rule 26.

It is not necessary to discuss the rule on the jurisdictional issue raised by Carrier.

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 Carrier did not violate the Agreement.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.