

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

In behalf of the senior Signalman-Signal Maintainer under Rule 5, who was working the Signalman class, for the difference in pay for what he received as an Assistant Signalman and that of a Signalman-Signal Maintainer for all time the relief trick in the Silvis Classification Yard was blanked, from December 13, 1958, until the position is filled. In the event there was no Signalman working in the Assistant's classification, due to force reduction, then claim is filed for the oldest Assistant Signalman who would be promoted under the rules of the agreement to fill this vacancy pending bulletin. Also claim is filed for the senior Helper who would be promoted to fill the vacancy left by the Assistant Signalman who should be promoted to fill the vacancy under the agreement rules for the time that this relief trick was blanked at the Silvis Classification Yard. [Carrier's File: L-130-155]

EMPLOYEES' STATEMENT OF FACTS: Prior to December 13, 1958, Mr. M. P. White had been assigned to the relief signal maintenance position at the Silvis Classification Yard, with the following assigned hours:

Saturdays and Sundays — (rest days of 1st trick) 6 A. M. to 10 A. M.,
11 A. M. to 3 P. M.

Mondays and Tuesdays — (rest days of 2nd trick) 3 P. M. to 11 P. M.

Wednesdays — 7 A. M. to 3 P. M.

Thursdays and Fridays — Rest days.

The assigned hours of the first trick are 6 A. M. to 3 P. M., with a meal period from 10 A. M. to 11 A. M. The assigned hours of the second trick are from 3 P. M. to 11 P. M.

When Mr. White was filling in on vacation vacancy of Foreman Jensen, the Carrier did not deem it necessary to have any work performed on the rest days of the above three positions and no employe, therefore, worked such rest days.

The employes contend, nevertheless, that the Carrier cannot blank rest day relief positions even though the Carrier does not require work to be performed on the rest days of regular employes which are in the cycle of the rest day relief employe.

There is no rule in the agreement providing that the Carrier must establish or maintain rest day relief positions. It is only where the Carrier desires to have work performed on rest days of regular assigned positions, and if there are sufficient such days on which work is to be performed, that a rest day relief position is necessary. In the instant case, no work was required or performed on the rest days involved and, hence, no requirement for a rest day relief position to be maintained.

As a matter of fact, Rule 17, Section 2 (e), mentions that relief assignments are "established to do the work necessary on rest days. . . ." (Emphasis ours.) In this case, there was no work considered necessary by the Carrier to be performed on the rest days of the regular assignments and none was performed on such rest days during period involved.

This and other Divisions of the Adjustment Board have ruled that there is no obligation on the part of the Carrier to establish or maintain rest day relief positions under circumstances herein involved.

We submit on the basis of the facts and evidence in this docket the Carrier did not violate the agreement and claim should be denied.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives and by this reference is made a part hereof.

OPINION OF BOARD: The theory of Petitioner's case is that by implication the Agreement estops Carrier from blanking a relief position, of a seven-day position, during a period of time when the regular position continues to be worked five days a week.

The facts are that the employe regularly assigned to the relief position was assigned to fill the position of a vacationing foreman for three weeks. During that period the relief position was blanked.

The essence of Petitioner's argument is that if the regular position of a seven-day position is worked the Agreement, by implication, requires that the relief position be filled on the sixth and seventh day.

Carrier denied the claim, giving as reasons: (1) no provision of the Agreement circumscribes Carrier's management prerogative to blank the relief position; (2) Carrier in the exercise of its judgment found it unnecessary to have the relief position worked; and (3) the work of the relief position was not assigned to or performed by any employe during the period the relief position was blanked.

Petitioner cites the Forty-Hour Week (Rule 17, Section 2), Rule 39 (Reduction in Force), Rule 56 (New Positions and Vacancies — Bulletining)

and Rule 57 (Bulletins—Issuing Of). It asserts that these rules, read together, by necessary implication, imposed an obligation upon the Carrier to fill the relief position. In addition, Petitioner argues that the latitude of work week assignments of seven-day positions, in contrast with five-day positions, is consideration for a concomitant obligation to fill the position seven days a week. In support it points to the following dicta in our Award No. 5589:

“However, where there is repeated blanking of the position, a serious reflection is cast upon the bona fide nature of the six and seven-day position designation even though the blanking may result from the occupant’s failure to report for duty. In a proper case repeated blankings of such positions might afford a basis for a claim of violation of the Agreement on the ground that such conduct is evidentiary of the fact that the positions are not in reality six or seven-day positions, but in fact five and six-day positions.”

There is no provision in the Forty-Hour Week Agreement which upholds Petitioner’s contentions. Award No. 5589.

The Rules cited by Petitioner cannot, except by interpolating, be construed as imposing an absolute obligation upon Carrier not to blank a relief position of a seven-day position. “It is not the function of this Board to write rules for the parties.” Award No. 5589.

The dicta from Award No. 5589 quoted, *supra*, visualizes a claim for treating what in fact is a five-day position as a seven-day position. It has no application here.

We will deny the claim.

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

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.