

Award No. 12455
Docket No. CL-11227

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

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

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM:

CASE NO. 1

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the current Clerks' Agreement, effective February 1, 1938, revised and reprinted April 1, 1953 when it changed the rest days of Mr. L. J. Maddox' position from Monday and Tuesday to Sunday and Monday thereby reducing his work week below five (5) days, which caused claimant to lose one day's pay, Sunday, May 4, 1958.

2. That Mr. L. J. Maddox be compensated for one day at the rate of his assigned position, No. 3 Stockman, Shops, Storeroom, for Sunday, May 4, 1958.

CASE NO. 2

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Current Clerks' Agreement, effective February 1, 1938, revised and reprinted April 1, 1953 when it changed the rest days of Mr. L. J. Maddox' position from Sunday and Monday to Saturday and Sunday thereby reducing his work week below five (5) days, which caused claimant to lose one day's pay, Saturday, August 16, 1958.

2. That Mr. L. J. Maddox be compensated for one day at the rate of his assigned position, No. 3 Stockman, Shops, Storeroom, for Saturday, August 16, 1958.

"It appears that the main objective of Rule 65½'s guarantee was not to penalize the Carrier for changing employees' rest days in response to operating needs, but to prevent the Carrier from laying off employees for brief periods during which their services might temporarily be dispensed with."

Other awards supporting this are the following: 5998, 7038 and 7376.

(e) Recognized practice through many years of negotiations and changes of the agreement establish a practice showing the intent of the parties as to the application of the pertinent rules, and it is not within the province of this Division to re-interpret the rules for the parties—816, 848, 2338, 2436, 3339, 4493, 4889, 4954, 5331, 5564, 5618, 5747, 5768, 6011, 6076, 6112, 6299, 6379, 6392, 6487, 6704, 6929, 6959 and 6961.

CONCLUSION

The change from a 7-day to 6-day position, and subsequently to a 5-day position, in accordance with Rule 38, with accompanying change in the rest days of the assignment is provided for under Rule 21, without penalty. The long-established practice and recognized construction given by the parties to the rules of the collective agreement (particularly Rules 21 and 51) confirms the fact that changing rest days does not violate the agreement or grant additional compensation. Claimant Maddox is not entitled to be paid for either Sunday, May 4th, or Saturday, August 16, 1958, as they were the new rest days of his changed assignment.

A denial award is respectfully requested.

(Exhibits not reproduced.)

OPINION OF BOARD: The two claims are similar. Due to a reduction of Claimant's operation from seven to six days, the Carrier was obliged to change Claimant's rest days from Monday and Tuesday to Sunday and Monday. Claimant alleges this deprived him of a day's work and makes claim under the guarantee rule. The second claim is similar when the rest days were subsequently changed from Sunday and Monday to Saturday and Sunday, on the reduction of work from six to five days. In each case the Claimant worked but four days prior to the newly established rest days.

The Organization argues that the Claimant's old work week was reduced to four days when the rest days were advanced and the new work week commenced on the first days of work in the new work week. The Carrier argues that the Claimant lost no work, and that the Claimant worked the same number of days in any seven day period, each such period containing two consecutive rest days, as required by Rule No. 38.

It is well established that a change in rest days does not necessarily change the assignment. Where the occupant does not exercise his seniority, but continues on in the same position, the assignment is not changed, and the position need not be bulletined. The work week is changed, by a change of rest days, but it remains the same assigned position. (Award 7319.) It is to be noted that in sustaining Award 7319 the claim was for time and one-half for the sixth and seventh consecutive work days worked by the Claimant, and the award held that the sixth and seventh days were work days worked by the Claimant.

Here the Claimants worked the first four days of their old work week, and were then allowed two rest days. The new work week would start on the first work day of the new work week. Thus, the number of work days in the old work week were reduced to less than 5 days, contrary to Rule 51 (b) which reads:

“Nothing herein shall be construed to permit the reduction of days for the employes covered by this rule below five per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.”

Rule 51 (b) uses the work week, and the question arises as to whether this refers to a work week or a calendar week. Previous awards have interpreted this as work week. The contract provides that employes work “work weeks”, and the necessities of operations require such weeks to commence on various days of the calendar week.

The great weight of authority in this Division is that when the work week is changed so that less than five days are worked in the old work week, a sustaining award is in order. (See Awards 11460, 7324, 8868, 8144 and 8103). The result is the same regardless of whether there is a change in the pay received during the pay period. A sustaining award is in order.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.