

Award No. 13016
Docket No. MW-12895

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when it denied Section Laborer Elmer Salo the right to work on December 19 and 20, 1959.

(2) Elmer Salo be allowed (16) hours' pay at his straight time rate of pay for time lost on December 19 and 20, 1959.

EMPLOYES' STATEMENT OF FACTS: Prior to December 19, 1959 Elmer Salo was assigned to a work week of Wednesday through Sunday, with Mondays and Tuesdays as his designated rest days.

However, he was required to suspend work on Saturday, December 19th and Sunday, December 20th, 1959, the last two work days of his Wednesday through Sunday assignment, thereby causing him to suffer the loss of two days' pay.

Consequently, claim as set forth herein was timely presented and progressed in the usual and customary manner on the property, but was declined at all the stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated June 1, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 13 (b) reads:

"(b) Except by agreement between the Company and the Committee, regularly established daily working hours will not be reduced below eight (8) hours per day, five (5) days per week, except that this number of days may be reduced in a week in which holidays occur by the number of such holidays."

employees working on Saturday or Sunday. Therefore, claimant of necessity, had to wait to resume work on the following Monday.

CONCLUSION

The Carrier respectfully requests that your Honorable Board sustain the position of the Carrier and deny the claim of the Employees as it has been clearly shown in the foregoing that there is no substance to the claim of the employees in this docket.

(Exhibits not reproduced.)

OPINION OF BOARD: Section Laborer Elmer Salo was assigned to a work week of five (5) days; Wednesday through Sunday. He was laid off at close of work on Friday. He received compensation for three days of his assigned work week. Claim is made for the fourth and fifth days.

On January 19, 1948, this Board adopted Award 3757 in which we ruled:

"OPINION OF BOARD: Robert Spohn, working on a regularly assigned position as section laborer, was notified on a Monday that he was being laid off at the end of that day. He was paid for just that one day in that week.

The Organization contends that it was a violation of Rule 4-a-1 for the carrier, having started him on work for the week, not to have given him work and paid him for work on the next four days.

Rule 4-a-1 is as follows:

'RULE No. 4—TIME ALLOWANCE

Hours Paid For. 4-a-1.

Except as provided in Rules 4-b, 4-b-1, and 4-b-2 the regularly established daily work hours will not be reduced below eight (8) consecutive hours per day, nor will the regularly established number of working days be reduced below five (5) consecutive days per week, except that this number of days may be reduced in a week in which holidays occur, by the number of such holidays.'

We are of the opinion that this Rule does guarantee work for five consecutive days per week except in weeks in which holidays occur.

The rule would not prevent the Carrier from abolishing positions of hourly rated employees at the conclusion of their work. When a man's week is started, however, he is employed for five consecutive days under this Rule and the unilateral action of the Carrier cannot terminate such employment prior to the expiration of the five day period."

Rule 14 of the Agreement between the Parties to this dispute, effective September 16, 1942 (as amended) at that time provided:

(a) Except by agreement between the Company and the Committee regularly established daily working hours will not be reduced below eight (8) hours per day, five days per week, except that this

number of days may be reduced in a week in which holidays occur by the number of such holidays. . . ."

By letter dated July 18, 1952 (accepted in writing by the General Chairman) Carrier's Director of Personnel confirmed an Agreement between the Parties as follows:

"July 18, 1952

This will answer your letter of May 31 and confirm our understanding reached in conference on June 9 relative to your protest regarding the application of Rule 14 and the past practice of reducing Maintenance of Way forces prior to the end of the work week.

Mr. Pattersen, Vice President and General Manager, stated that he concurred with your position and that in the future the Company would be governed by the decision in Award 3757 rendered by the Third Division of the National Railroad Adjustment Board and make force reductions only at the conclusion of the work week, and that this would apply to all employees covered by the scope of the Maintenance of Way Agreement."

On June 1, 1953, the Parties re-adopted without change the portion of Rule 14 quoted above, and numbered it Rule 13 (b).

On the foregoing facts, Rule 13 (b) must be given the same interpretation attributed to it by the Parties' Agreement evidenced by letter of July 18, 1952. Under that interpretation, force reductions may be made "only at the conclusion of the work week."

For the above reasons we find Claimant was improperly laid off and is therefore entitled to claimed compensation.

The claim is therefore sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.