

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
(Formerly The Order of Railroad Telegraphers)**

**GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado and Santa Fe Railway, that:

1. Carrier violated the Agreement between the parties when it changed the rest days of the Agency Positions at Marietta and Dougherty, Oklahoma, without a service requirement.

2. Carrier shall now be required to pay H. W. Giese the difference between the pro rata and time and one-half rates for work performed each Saturday and Sunday and eight hours at the pro rata rate for each Thursday and Friday, beginning May 31, 1960.

3. Carrier shall now be required to pay L. R. Mitchell the difference between the pro rata and time and one-half rates for work performed each Thursday and Friday and eight hours at the pro rata rate for each Saturday and Sunday beginning May 31, 1960.

**EMPLOYEES' STATEMENT OF FACTS:** An Agreement between the parties bearing effective date of June 1, 1951, is in evidence.

At Marietta, Oklahoma, the Carrier maintains a station at which it employs an Agent covered by the Agreement. Prior to May 31, 1960, his assigned hours and rest days were as follows:

Agent-Telegrapher — 7:45 A.M. to 3:45 P.M. Rest days Saturday and Sunday.

At Dougherty, Oklahoma, the Carrier maintains a station at which it employs an Agent covered by the Agreement. Prior to May 31, 1960, his assigned hours and rest days were as follows:

Agent-Telegrapher — 7:00 A.M. to 3:00 P.M. Rest days Thursday and Friday.

Service was required on these two positions seven days each week and rest day relief work was performed by the incumbent of a regular rest day relief position.

notice dated and issued on March 12, 1951, Carrier changed the rest days of this position from Saturday and Sunday to Tuesday and Wednesday. This change was made effective as of March 17, 1951. There is no question about Carrier's right to make this change."

See also Third Division Awards Nos. 9120, 7376 and others.

Since the circumstances surrounding the change in rest days that was the subject of the claim that arose on the respondent Carrier's property and was denied by the Third Division in its Award No. 6384 were somewhat similar in nature to those in the instant dispute, the Board's attention is directed to the "Opinion of Board" in Third Division Award No. 6384 which reads in part as follows:

"Management, except through restrictions contained in this Agreement, has the right and duty to arrange its work efficiently. The Board must find in this case that the Carrier did show by a preponderance of the evidence that it was not 'practicable' to have Saturday and Sunday as rest days. The following assertions of the carrier were not controverted:

'In addition to being a port through which considerable import and export business is handled, Stockton-Mormon is one of the Carrier's heaviest interchange points. Much of the interchange of traffic with the Southern Pacific and Western Pacific consists of perishable fruits and vegetables which, in addition to requiring prompt movement, also necessitates the attention of experienced employees to assure correct reporting and handling of all matters pertaining to the cars received and handled, to and from connecting lines. The duties of Position 715 included, among other things, the important duties of handling reports and other matters pertaining to the interchange of cars and thus necessitated the services of an employee who was experienced in the duties thereof, particularly on Saturdays and Sundays, which were the heaviest days of the week insofar as concerned Position 715. Since the so-called car desk, occupied by the incumbent of Position 715 was being protected on the first and third tricks on Saturdays and Sundays with somewhat inexperienced assigned rest day relief employees, it was also highly desirable, from the standpoint of efficiency to have an experienced employee on the car desk during at least a portion of those days. Since Mondays and Tuesdays were the lightest days of the week, insofar as concerned the duties of Position 715, those days were assigned as the rest days or days off for the regular incumbent of Position 715, in the hope that the then available off-in-force-reduction employees, who were female employees, would be able to satisfactorily handle the duties and responsibilities attaching to Position 715 on Mondays and Tuesdays.'

In conclusion, the Carrier respectfully reasserts that for the reasons hereinabove set forth, the Employees' claim in the instant dispute is entirely without merit or support under the governing agreement rules and should be denied in its entirety.

**OPINION OF BOARD:** The question at issue is whether Carrier breached the Agreement by changing the agents' rest days at its Marietta Station from

Saturday and Sunday to Thursday and Friday and at its Dougherty Station from Thursday and Friday to Saturday and Sunday. The positions are seven-day positions and both are manned on their respective rest days by the same employe, J. R. Snow.

Article III, Section 17, is the controlling provision of the Agreement and, in pertinent part, provides that established rest days ". . . may be changed to meet service requirements. . . ." The critical issue therefore is whether or not those rest day changes were made to meet "service requirements."

The record indicates that the changes were based on management's evaluation of a report from the Assistant General Freight Agent for the Santa Fe Railway Company at Oklahoma City. That report states that a Mr. Cliff Ruhrup of Dolese Company, Carrier's principal shipper at Dougherty, had complained that whereas service was fine when the regular agent was on duty, "things went to pot" on Thursday and Friday, his rest days. According to the report, Ruhrup also pointed out that Thursday and Friday are heavy loading days and wondered if there was any chance of having the regular agent work straight through from Monday to Friday and then take his days off Saturday and Sunday.

While Carrier would have been on firmer ground if it had introduced into the record a direct statement by an official of the customer, the Assistant General Freight Agent's report is undisputed and no circumstances have been brought to our attention that tend to disprove or detract from it in any material respect. There is no evidence of bad faith on Carrier's part or of an improper attempt to avoid its commitments under the Agreement.

It certainly is realistic and sound business practice under the circumstances of this case for Carrier to seek to satisfy a shipper and, in its judgment, improve efficiency by making rest day changes. We are satisfied that these changes were put into effect to meet "service requirements" and 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 the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.