

Award No. 14098
Docket No. CL-14615

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5482) that:

(1) Carrier violated the current Clerks' Agreement at Harrisburg, Illinois on Monday, July 2, 1962, when it denied Mr. J. H. Wise, regularly assigned to Chief Yard Clerk Position No. 6, the right to work his assigned day of rest.

(2) Mr. J. H. Wise shall now be compensated for eight (8) hours' pay at pro rata rate of his regular position of Chief Yard Clerk, Position No. 6, for Monday, July 2, 1962, and all Mondays subsequent thereto until the Agreement has been complied with.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. H. Wise is regularly assigned to first trick Chief Yard Clerk Position No. 6, Harrisburg, Illinois. Work week of Tuesday through Saturday. Hours of service are 8:30 A.M. to 5:30 P.M., with one hour for lunch. Rate of pay is \$20.319 per day. Mr. Wise carries a seniority date of May 12, 1919. Rest days on Position No. 6 are Sunday and Monday.

The Carrier had another regular assigned Yard Clerk Position No. 8, at the same location, incumbent Mr. J. E. Crabb. This position had a work week of Monday through Friday. Rest days — Saturday and Sunday. Hours of service — 9:00 P.M. to 5:00 A.M., with twenty (20) minutes for lunch. Rate of pay \$19.938 per day. Mr. Crabb carries a seniority date of September 30, 1924.

Prior to July 2, 1962, Mr. Wise worked Position No. 6 with a work week of Monday through Friday, which had been in existence for many years. Under date of June 27, 1962, Mr. F. D. Champion, Agent, Harrisburg, Illinois, issued Bulletin No. 4, changing the Monday through Friday work week of Mr. Wise on Position No. 6, to Tuesday through Saturday and rest days of

pected deviations from this pattern is made abundantly clear by its repeated use of the expressions "staggered work week" "in accordance with operational requirements", and "so far as practical." The great variety of conditions met in the railroad system of the country and even varied conditions on a single railroad require flexibility on this matter. The tenor and substance of the Board's discussions and recommendations show definitely that the Board intended to permit the Carriers to stagger work weeks. In contrast with the obligation of the Carriers to sustain the burden of proof in the matter of non-consecutive rest days, it is for the Employes here to show that some particular operation requirements of the carriers are not better met by having the work weeks staggered."

(Emphasis ours.)

In the progression and discussion of this claim on the property, the Organization has also stated that positions changed from five-day to six-day status must be bulletined. There is no rule in the Clerks' Schedule requiring the advertising of positions changed from five-day to six or seven-day assignments and vice versa, nor has it ever been the practice on this property to advertise jobs in such cases. Further, there would be no logical reason for advertising a job in such cases, as the change would not affect the incumbent of the five-day portion of the assignment. Only at points where sufficient clerk force is employed to require regular relief assignments would it mean a change in assignments and require bulletining of the relief assignments only. With only two six-day assignments involved, as here, or at points where sufficient relief work is not available to make a full five-day assignment, the relief necessary is always furnished from the extra board.

Rule 16, paragraph (g), sub-section (7), which concerns the avoidance of non-consecutive rest days, reads:

"The least desirable solution of the problem would be to work some regular employes on the sixth or seventh days at overtime rates and thus withhold work from additional relief men."

CONCLUSION

The Organization requested and was granted a rule in 1943, giving the incumbents of regular assignments the right to displace in cases of change in relief days or starting time of assignments. Failure of claimant and Clerk Crabb to assert their rights must be considered as an acknowledgment that Carrier's actions were proper, and constituted, as changed, bona fide and proper assignments under Schedule Rules.

Carrier respectfully requests that your Board so hold and deny claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Until June 30, 1962, Wise, the Claimant in this case, was assigned to Chief Yard Clerk No. 6, 9:30 A.M. to 5:30 P.M., rest days Saturday and Sunday; and Crabb, not a Claimant herein, was assigned to Yard Clerk Job No. 8, 9:00 P.M. to 5:00 A.M., rest days Saturday and Sunday; Job No. 6 was a higher paying job than Job No. 8; both positions were up to then five day positions. Carrier states, and Organiza-

tion does not successfully rebut, that effective June 30th it changed both positions to six day assignments. Beginning on June 30th and ending September 10, 1962, Claimant's assignment was changed by changing the rest days to Sunday and Monday; Crabb was assigned to relieve Job No. 6, at the higher rate, on Mondays, 9:30 A.M. to 5:30 P.M., and to work his regular basic assignment on Job No. 8 Tuesdays through Fridays 9:00 P.M. to 5:00 A.M.; an extra man was assigned to work Job No. 8 on Mondays, 9:00 P.M. to 5:00 A.M.

Organization argues that since, according to Carrier, "there were not . . . enough jobs . . . to have an assigned relief position", and there was not an available qualified extra man to assign under Rule 16(j) to Job No. 6 on the unassigned Mondays, the Monday assignment should have gone to Claimant as the regular employee assigned to the job. According to the Organization, Carrier violated Rule 19(b) in requiring Crabb to suspend work during his regular hours to absorb the overtime on Job No. 6.

Carrier argues that since it assigned Crabb to perform the work of Job No. 6 on Mondays as part of his regular assignment, it was part of an assignment, and so not subject to Rule 16(j). Carrier asserts in its Submission to the Board that the failure of the involved employees to exercise displacement rights under Rule 13(b) indicated satisfaction with and acceptance of the new assignments as proper; and, that Rule 13(b) authorized the changes and the manner in which they were accomplished. We find nothing in Rule 13(b) which warrants taking the failure of the involved employees to exercise their displacement rights thereunder as a waiver of the right of the Organization to challenge the validity of the herein involved changes in assignments, or which warrants us in concluding that those changes were not in violation of some other rules of the Agreement.

There remains Carrier's contention that the Monday work on Job No. 6 was part of Crabb's regular assignment and thus not subject to Rule 16(j). For reasons set forth below, we find that this contention is inconsistent with the "Note" at the beginning of Rule 16. Carrier relies on the fact that a series of awards have found that: "A part of the bargain for a five day week at the then existing pay for six days' work was the right of the Carrier to eliminate the necessary rest day work to the extent that it could by the expedient of staggering work weeks." (Award 6946, Carter). The issue decided in Award 6946 (and the other awards cited to this referee which follow Award 6946 with approval) differs in its factual basis from the issue involved in the current case. The issue as stated by Referee Carter in Award 6946 was:

"The question raised as to whether or not the occupant of a position may be used on one of his regularly assigned days to do work on a rest day of a different position having different duties by combining such necessary duties with those of his own position is a wholly different matter. . . . We shall attempt to resolve the issue. . . ." (Emphasis ours.)

In that case, as in the others cited, Employee No. 2 performed the duties of Employee No. 1 on the rest day of Employee No. 1, and no other employee needed to be nor was assigned to perform the duties of Employee No. 2 on the day No. 2 performed the duties of No. 1; we find in the instant case, an extra employee was assigned to perform the job of No. 2 on the days No. 2 performed the job of No. 1. From the point of view of the interpretation of the 40-hour week rule (Rule 16 of this Agreement)

expressed by Referee Carter et al, this difference in fact may lead to a different final conclusion in the case, especially bearing in mind that the "Note" which initiates Rule 16, defines "position" and "work" as "service, duties, or operations necessary to be performed the specified number of days per week, and not the work week of individual employees." Referee Johnson in Award 9574, approving and following Award 6946, stated the point clearly: "And, as pointed out in the 'Note' at the beginning of Section 1, the 'work weeks' which may be staggered are work weeks of 'service, duties or operations necessary to be performed', and not the work weeks or positions of individual assignments."

If we apply this line of reasoning to the facts in this case, and there is no reason we should not, we find that the work weeks of Job No. 8 and Job No. 6 were not staggered: the operations, duties and service of Job No. 8 continued to be necessary on Mondays and were performed by an extra man. The workweeks of the individual employees assigned to the jobs were staggered and one of them was required on Mondays to suspend work during the regular hours of his basic position (which position continued, nevertheless, to require performance at the regular time on Mondays) in order to perform the duties of another position, with the result that overtime work which would otherwise, under the circumstances involved, have been assigned to Claimant, was absorbed.

In other words, this is not a case (such as are involved in Awards 6946 et al) in which by staggering positions or work (as defined in Rule 16) Carrier was able to save by eliminating unnecessary jobs; it is a case in which Carrier, in order to save the premium payment required for overtime work, shifted the assignment of an employee from the regular hours of his position and covered those regular hours by assignment of an extra employee. On the basis of the foregoing, we will sustain 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1966.