

Award No. 14189
Docket No. CL-15175

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5689) that:

(1) Carrier violated rules of the Clerks' Agreement when it failed to change the assigned rest days of IBM Position 339 and, instead, continued a work week of Thursday through Monday and rest days of Tuesday and Wednesday for the position after Carrier's operational requirements changed.

(2) The regular incumbent of IBM Position 339, namely, Mr. A. Walton and/or his successor or successors, shall be compensated at the time and one-half rate for each Saturday and Sunday or each Sunday and Monday required to work on and after September 22, 1963 and continuing so long as the rules violation continues or until such time as proper rest days are assigned.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains at Clearing, Illinois the IBM Machine Room which is operated seven (7) days a week, twenty-four (24) hours per day. Positions in the Machine Room are distinctively worked five, six and seven days per week, in accordance with the Carrier's operational requirements. Six day positions are regularly relieved one day each week and seven day positions are regularly relieved two days each week by regularly assigned relief employees. The status of the operation is subject to change due to the amount or nature of the traffic, or seasonal fluctuation and the positions and rest days are changed accordingly, either from 5-day to 7-day assignments with any two days designated as rest days, or from 7-day to 5-day assignments with Saturday and Sunday designated as rest days, or from a 7-day to 6-day assignments with Sunday and Monday, or Saturday and Sunday designated as rest days. (Employees' Exhibit Nos. 1 and 2.)

Prior to the date of the instant dispute, Claimant was the incumbent of IBM Position 339, assigned seven (7) days per week, Thursday through Monday with rest days of Tuesday and Wednesday, because the nature of the

The facts, record and rules fully support the Employees' position and the Board is respectfully requested to sustain the claim in its entirety.

CARRIER'S STATEMENT OF FACTS: The "I.B.M." Room in which Position #339 was established is a 24 hour per day—365 days per year operation.

Five, Six and Seven-Day positions have been established and maintained in this "I.B.M." Room to meet the requirements of the entire operation. The number of positions in each of the classifications have fluctuated in accordance with the volume of work necessary to be performed which is dependent in a large degree on the number of cars handled on the railroad.

At the time Position No. 339 was established the conditions indicated a need for it seven days per week and it was so utilized, with a regular incumbent working five days per week and a relief employee used on the sixth and seventh days.

POSITION OF CARRIER: The rest days of Position No. 339 were Tuesday and Wednesday and prior to September 18, 1963, the position had been worked seven days weekly. There was no regular relief assigned on Wednesdays and the position on that day was worked by an un-assigned employee. On days, after September 18, 1963 when there were no un-assigned employees available and the need for the position was not in evidence, the position was blanked for that day without any change having been made from a seven to six day assignment. The position has since September 18, 1963 worked six or seven days as conditions dictated.

I.B.M. Position No. 339—Clerical Machine Operator, was established in accordance with RULE 39½ WORK WEEK.

NOTE: The expressions "position" and "work" used in this rule refer to service, duties, or operations necessary to be performed, the specified number of days per week, and not to the work week of individual employees.

(Emphasis Ours)

It was bulletined as a seven day position with Tuesdays and Wednesdays as assigned rest days. The regular incumbent bid in and accepted the position with such conditions. He was allowed all of the assigned rest days off (or paid at the time and one-half rate for work on any such rest day). He was not required to work at straight time on any day not a part of his regularly assigned work week which was properly established in accordance with the applicable rules of the agreement. The claim is without merit.

OPINION OF BOARD: At Clearing, Illinois the Carrier maintains an "IBM" room that is operated seven days a week, twenty-four hours per day. Five, six and seven day positions have been established and maintained in this "IBM" room to meet the requirements of the Carrier's operation. The number of positions and the status of the operation has fluctuated in accordance with the volume of work necessary to be performed.

Prior to the date of this dispute, Claimant was the incumbent on "IBM" Position 339. This position was bulletined as a seven day position with assigned rest days of Tuesday and Wednesday. The Claimant bid in and accepted the position with such conditions. The position was relieved on Tuesdays by a relief employee and on Wednesday by a qualified furloughed employee or by the incumbent.

The Organization states that after September 18, 1963 "the position was

filled only six days each week, i.e., blanked each Wednesday, thereby establishing that the status of the position was changed from a 7-day to 6-day assignment and entitled to rest days accordingly, either Sunday and Monday or Saturday and Sunday."

The Carrier contends that after September 18, 1963 when there were no unassigned employees available and the need for the position was not in evidence, the position was blanked for the day without any change having been made from a seven to six day assignment. They state that, "The position has since September 18, 1963 worked six or seven days as conditions dictated."

The claim was properly filed and handled on the property.

The claim was denied by the Carrier and subsequently appealed to the Manager Labor Relations. The claim was declined on April 17, 1964.

The particular rules involved in this dispute are Rules 38 and Rule 46 of the Agreement.

"Rule 38 Work Week

Note: The expressions 'positions and work' used in this rule refer to service, duties or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

(a) General:

Subject to the exceptions contained in this rule a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven is hereby established for all employees. The work weeks may be staggered with the carrier's operations requirements; so far as practical, the days off shall be Saturday and Sunday. This rule is subject to the following provisions:

(b) Five-Day Positions

On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

(c) Six-Day Positions

Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(d) Seven-Day Positions

On positions which have been filled seven days per week, any two days may be the rest days with the presumption in favor of Saturday and Sunday.

* * * * *

Rule 46—Notified or Called

(a) Except as otherwise provided in Rule 47, employees notified or called to perform work before or after, but not continuous with their regular work period, shall be allowed a minimum of three (3) hours' pay for two (2) hours' work or less, and if held for duty in excess of two (2) hours, time and one-half will be allowed on the actual minute basis.

(b) An employee notified or called to perform work on one or both of his assigned rest days or on any of the holidays specified in Rule 51, shall be paid a minimum of eight (8) hours at the rate of time and one-half for such service."

This same dispute has been before this Board on many different occasions. We recognize the fact that there have been conflicting awards, however, we feel that in Award 6946 (Carter) we thoroughly analyzed the previous awards and expressed the majority opinion of this Board.

Award 6946 states:

"It will be noted that the staggering of work weeks is an integral part of Article III, Section 6. It is clearly of equal importance with the establishment of the 40 hour week itself. In other words, the establishing of the 40 hour week with two rest days in seven and the staggering of work weeks in accordance with the carriers' operational requirements are the two primary provisions of the 40 Hour Week Agreement, even though they are subject to other provisions of that agreement. It is plain that the right to stagger work weeks to meet carriers' operational requirements was of equal importance with the establishment of the 40 hour work week itself. We must conclude that the establishment of the 40 hour week without a reduction in weekly pay carried with it the idea that the carriers could eliminate certain unnecessary employees through the process of staggering work weeks. It was one of the compensating factors that was of advantage to the carriers when they agreed to the 40 hour work week with the same pay as the previous six day week. Award 5545."

Award 6946 was cited with approval in Award 9574 (Johnson).

These awards and many others express the opinion of this Board. These include Awards 5545, 5555, 5556, 5557, 5912, 6001, 6002, 6023, 6042, 6075, 6184, 6232, 6602, 6947, 6948, 7073, 8003, 8136, 8137, 8138, 8139, 8278, 9030, 9042, 9105, 9119, 9392, 9504, 9776, 10056, 10171, 12346, 12347 and 13527.

We find that the Agreement has not been violated.

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 February, 1966.