

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19482
Docket Number TE-19538

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Division, BRAC)

PARTIES TO DISPUTE: (
(Portland Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Portland Terminal Railroad Company, TC-5833, that:

Claim for eight hours at the pro rata rate on each day July 3rd and 4th, 1970 account carrier changed rest days, failed to notify A. A. Fairchild Claimant and improperly suspended him from assignment in violation Rule 8, 9 and 14 of current Agreement.

OPINION OF BOARD: This claim arose from circumstances surrounding certain changes in assignments made by the Carrier, resulting in Claimant's being required to observe four consecutive rest days. Claimant asks that he be paid for two of those days at the pro rata rate.

FACTS

Prior to the events leading to this dispute Claimant Fairchild was regularly assigned to the third shift towerman position. Under date of June 23, 1970, Carrier issued Job Bulletin No. 38, which reads, in pertinent part, as follows:

"Effective first shift, 1 July, 1970 the following position will be abolished - first shift Towerman - Nickelson.

Effective July 1, 1970, due to changed rest days, titles and/or duties, the following positions are open to bid by qualified employees.

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Third shift Towerman: Rate: 3.5146. Hours: 11:59 p.m. to 7:59 a.m.
Rest days Friday and Saturday. Duties: All Towerman duties and learn all operators duties and perform same when required.

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* * *

"Bids should be in my office by noon, Sunday, June 28, 1970.

* * *

J. H. Jones
Manager."

In response to this bulletin Claimant Fairchild submitted a bid for the same position he was occupying, that is, the third shift Towerman job. He continued to work this position on its work days through June 30, 1970, and then observed the two rest days of Wednesday and Thursday, July 1 and 2, without exception from his supervisor, and without advice of the result of his bid. He returned to work at the usual time, 11:59 p.m., on Friday, July 3, but was then notified that he was the successful bidder, and was instructed to go home and observe the two rest days of the new assignment, Friday and Saturday, July 3 and 4. He complied with the instructions, and thus was obliged to observe four rest days in succession.

CONTENTIONS OF THE PARTIES

Essentially, the Employees' contentions are that the only tangible result of Carrier's Bulletin No. 38, so far as the third shift Towerman position is concerned, was a change in its rest days from Wednesday and Thursday to Friday and Saturday; and that Carrier erred in timing the transition so that the work week of the so-called "new" assignment started on its rest days rather than on the first day the assignment was bulletined to work, as prescribed by Rule 9(1) of the parties' Agreement.

Carrier, on the other hand, contends that the abolishment of one position and rearrangement of others involved far more than a change of rest days and resulted in new positions being created, which it had a right to bulletin and fill without regard to former positions, former rest days, etc.

RESOLUTION

The rules relied on to support the claim are those derived from the National 40-Hour Week Agreement of 1949. Those rules have been interpreted and applied in many awards of this Board. Some of them deal specifically with the basic issues here involved. Awards 6771 and 18011, for example, held that abolishment and/or rebulletining of a position to accomplish a change in rest days is contrary to the intent of those rules.

The record before us supports the Employees' contention that the rebulletining of the third shift Towerman position resulted in nothing more than a change in its rest days. It follows that the only remaining problem is whether the 40-Hour Week rules permit a work week to be started on its rest days.

This question has been before the Board in scores of cases, and has consistently been decided in the negative. Award 6519, with Opinion by Referee William M. Leiserson, who, as Chairman of the Emergency Board which granted the 40-hour week and later as arbitrator, wrote most of the rules in question, gave this issue detailed treatment.

Referee Leiserson concluded his remarks on this point with these significant words:

" . . . By requiring him to take the rest days of the new assignment in advance of the work-days, the Carrier not only violated the 72-hour notice rule, which it admits, but also the 'Beginning of Work Week' rule (8, Section 2(i)). This rule says a work-week begins 'on the first day on which the assignment is bulletined to work.' (emphasis added) It does not permit a work-week to begin on a rest day. By requiring claimant to start resting on Sunday and Monday, and then continue to work the Tuesday through Saturday position, it clearly started him on the rest days of the new assignment. In this way the assignment was turned around, and would remain turned around as long as the claimant occupied the position."

(The emphasis was added by the Referee. Rule 8, Sec. 2(i) there was the same as Rule 9(i) in the present case).

The principle thus enunciated has been followed and applied with practical unanimity ever since. Reference to Awards 7324, 8103, 8144, 8145, 8868, 10289, 10517, 10786, 10875, 10908, 11460, 11474, 11990, 11991, 11992, 12455, 12601, 12721, 12722, 12798, 13660, 14116, 14213, 15222, 15338, 15441, 15530, 17343, 18011, among many others will substantiate this observation.

In conformity with the precedent thus established and settled, this claim will be sustained.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.