NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25463

THIRD DIVISION

Docket Number CL-25345

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Delaware & Hudson Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-98091 that:

"(1) Carrier violated Article 25 - Guarantee and Article 33 - Forty-Hour Work Week when, effective Monday, April 14, 1980, the rest days of regular third-trick position Telegrapher-Clerk at Hudson, Pa., incumbent Andzulis, were changed from Tuesday and Wednesday to Monday and Tuesday.

As a result of the foregoing change in rest days, Claimant Andzulis was not compensated for Monday, April 14, 1980.

(2) Accordingly, Claimant Andzulis should be compensated one day at the pro rata rate of $8.9978 per hour for April 14, 1980. (37-80)"

OPINION OF BOARD: Claimant held a regular third-trick position of Telegrapher-Clerk. His assigned rest days were Tuesday and Wednesday. He was notified that effective Monday, April 14. 1980, the rest days of the position would be changed from Tuesday-Wednesday to Monday-Tuesday.

The Claimant worked his regular schedule from Thursday, April 10 through Sunday, April 13. He was not permitted to work on Monday April 14. On Wednesday, April 16 he assumed the newly assigned schedule.

There is no dispute as to the Carrier's right to post and change the scheduled rest days of the assignment. The only point in contention is the date on which such change was to become effective.

Applicable rules are as follows:

"ARTICLE No. 25

"Guarantee

"A regularly assigned employe shall receive one day's pay within each twenty-four (24) hour period, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than eight (8) hours as per location, except on his rest days when occupying seven-day positions, or on his rest days and holidays when occupying five-day or six-day positions...:

"ARTICLE No. 33

Forty-Hour Work Week

Section 1. Establishment of Shorter Work Week

Note - The expressions "positions' and "work" used in this Article No. 33 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 employee. . . .

I. Beginning of Work Week

The term 'work week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven consecutive days starting with Monday."

Under these rules, the Board finds that the changed schedule should have commenced on the first work day, that is, Wednesday. Award No. 19482 is precisely on point and states as follows:

"The record before us supports the Employe' 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 observations..

The Carrier points out that the Claimant worked, on an overtime basis, on his previous rest day on Wednesday, April 9. This, however, does not affect the rule provision as to the proper day for beginning a "work week' -- that is, "the first day on which the assignment is bulletined to work". Awards cited by the Carrier such as Award No. 22241 are not applicable, since they concern taking the rest days of another temporary assignment.

The Claimant was improperly denied the right to work on the fifth day of his previously assigned work week on Monday, April 14.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of May 1985.