Award No. 854
Docket No. SG-794

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE NEW YORK CENTRAL RAILROAD COMPANY (West of Buffalo)

STATEMENT OF CLAIM: "(a) Claim for termination of share-the-work practices and restoration of the regular schedule of employment of six days' work per week for all Signal Department employes affected.

"(b) Claim of employes affected for compensation for the difference between the regular six day work week and the reduced work week due to the refusal of the management to terminate share-the-work practices and restore the employes to their regular six day work week in accordance with the request of the General Chairman as of September 1, 1937."

EMPLOYES' STATEMENT OF FACTS: "Signal Department employes on this railroad, prior to the depression beginning in 1930, always worked a regular schedule of eight hours a day and six days a week. This had been the practice or custom for many years and it was upon that basis that all hourly rates of pay were established and the various rules in the agreement covering working conditions were negotiated and made effective. The number of employes fluctuated with changing conditions and when reductions in expenses were made the men with least seniority were laid off, or furloughed, in accordance with the seniority rules.

"The business depression caused many Signal Department employes on this railroad to be laid off and as it continued the employes were confronted with further reductions in force from time to time unless arrangements were made to divide up the time to be worked by the entire group in order that the junior men would not be entirely deprived of employment. The management of the railroad proposed that all the men work a schedule of five days a week, in place of the regular or normal schedule of six days a week, in lieu of further force reduction, and the employes accepted such an arrangement with the understanding that they could and would revert to the regular work week of six days when they so desired and if force reductions were then necessary the seniority rules would govern. This arrangement for a five day work week, in place of the regular employment of six days per week, obviously resulted in the loss of one-sixth of the normal wages of all the men, they being on an hourly basis and only paid for the hours actually worked. Under such arrangement, therefore, all the men—the oldest in seniority as well as others—accepted a reduction in compensation of over 16 per cent in order to avoid further force reductions.

"After several years of sacrifice of a part of their regular wages under this share the work arrangement and with business conditions and employ-

on their section requires additional man hours and is of such nature that it can be performed efficiently and economically by them.

"Our signal department organization is responsible for the requirements of the service. While we are always glad to have suggestions, the management after all has the responsibility, and is in better position to understand the necessities of the service than the employes or their representatives.

"Without knowing definitely the position of the representatives of the signal employes, we make this general statement of our position. If in this proceeding more definite information is obtainable as to the real position of the employes' representatives, and in the event the Third Division decides to accept jurisdiction, we are depending upon your Board granting us ample time to digest same and supply any pertinent information in connection therewith."

There is in existence an agreement between the parties bearing effective dates of July 1, 1921, and February 16, 1922.

OPINION OF BOARD: The disputes involved in Dockets SG-794, SG-798, SG-799, SG-800 and SG-802 present in general the same question. In fact, the employes endeavored to have the disputes involved in these dockets considered as one case, and it was originally so filed; however, the carriers involved insisted upon each of the five cases being separately submitted, which procedure was later followed.

The cases were heard together and for the purpose of expediting their handling this opinion will apply to each of the cases, except insofar as the awards in the other cases may indicate.

The carrier in each of the above named dockets, relying upon Award No. 90 of the Third Division, questions the jurisdiction of this Division over these disputes, contending that they involve the meaning of Item 2 of the National Mediation Agreement of August 5, 1937, Case No. A-395, and the interpretation placed thereon by the Mediation Board, dated May 21, 1938.

The Board is of the opinion that Award 90 is not applicable to these cases and that it has jurisdiction over the disputes presented in each of above named dockets. The sole question presented in Docket CL-115, covered by Award 90, was whether certain employes were included in a Mediation Settlement of a wage dispute. The record before the Board did not disclose the facts; obviously, therefore, it was necessary to refer the question to the Mediation Board for determination. The question presented in these dockets is entirely different. Item 2 of the National Mediation Agreement of August 5, 1937, upon its approval by the Mediation Board, became and now constitutes a part of the prevailing agreements between the parties, is binding upon them, and it is as controlling upon this Division as any other rules in the agreements.

Under Section 5, Second, of the Railway Labor Act, as amended June 21, 1934, the Mediation Board is empowered to render interpretations of Mediation Agreements. Upon application appropriately made to it the Mediation Board on May 21, 1938, rendered its interpretation of Item 2 of said Mediation Agreement. That interpretation likewise became binding upon the parties and is also controlling upon this Board in its disposition of the disputes presented in the above named Dockets.

The disposition of these disputes does not involve an interpretation of Item 2 of said Mediation Agreement but a determination of whether the parties have complied with its requirements as interpreted by the Mediation Board. Many agreements in effect between Railroad Brotherhoods and carriers and many rules in other such agreements have come into being as the result of Mediation, and, surely, it would not be seriously contended that

this Board is without authority to decide disputes arising under such agreements or rules. The Board has disposed of many such disputes and holds that it has jurisdiction of the disputes in these Dockets.

A statement of the history of the long and almost continuous controversy between the parties relating to hours of employment and working conditions of signal employes is necessary to a clear understanding of the specific dispute involved in these Dockets. For many years prior to the depression, which began to affect railroad employment in 1930, it was the established practice on almost all, if not all, the railroads of the country to work signal employes on a six day week schedule; and when retrenchments were made from time to time, the junior men, in point of seniority, were laid off in accordance with seniority rules. This condition prevailed when the current agreements were executed between the parties (except in Docket SG-800, which is a new contract, effective Oct. 26, 1935), following termination of Federal Control and Operation of the Railroads.

It was necessary to invoke the aid of the U. S. Railroad Labor Board to settle certain disputes between the carriers and the Brotherhood of Railroad Signalmen of America as to the language and scope of many of the rules proposed for incorporation in the agreements to be executed following the termination of Federal Control. These disputes were disposed of by Decision 707 of the U. S. Railroad Labor Board, dated Feb. 13, 1922. The form of the agreement approved by Decision 707, contained no guarantee of a six day work week. In fact, the record indicates that employes did not ask for a rule guaranteeing such employment when the matter was before the U. S. Railroad Labor Board but did ask for a rule giving employes one day off in seven where employes were assigned to positions requiring continuous service, and on a petition filed by the Brotherhood to modify certain of the rules approved by Decision 707, the Labor Board in Decision No. 1538, approved such a rule which is now in effect between the parties.

The record shows, in fact the parties agree, that the established practice to work signal employes on a six day week work schedule was still in effect when the Railway Labor Act of 1926 was approved. Sec. 6 of this Act provided:

> "Carriers and the representatives of the employes shall give at least thirty days' written notice of an intended change affecting rates of pay, rules, or working conditions, and the time and place for conference. * * * "

Thus, in 1930, when it became necessary for the railroads of the country to make retrenchments, share-the-work practices, which were then being universally urged by Government officials upon all large employers of labor, could not be inaugurated by the railroads of the country as to many railroad crafts, except after compliance with Sec. 6 of the Railway Labor Act, or except by agreement with the Brotherhoods' representatives. The latter method of procedure was followed, and the record justifies the conclusion that on the lines of all carriers involved in these disputes, then having contracts with the Brotherhood of Railroad Signalmen of America, the reduced work week (except in one instance which will be hereinafter referred to) was established by agreement for the purpose of avoiding force reductions and the creation of additional unemployment. The record shows that employes complained considerably about the reduced work week but when it became necessary to make further retrenchments and conferences were held, the employes agreed to still greater reductions in the work week rather than laying off more employes.

By 1934 the employment situation on the railroads as it affected the employes, was very bad due to share-the-work practices then in effect and on April 30 the Brotherhood made formal demand upon carriers for not less than five days employment per week for all signal employes effective, May 1, 1934, and the recognition that employes were entitled to six days

per week employment under the prevailing agreements between the parties. The Brotherhood requested the carriers to join in a submission of the latter question to the Board of Mediation in the event they were unwilling to recognize the right of the employes to six days per week employment under the agreements. Some adjustments were made in the employment situation in line with the Brotherhood's demand but the carriers denied that the agreements between the parties guaranteed six days per week employment, declined to enter into such an agreement, and declined to join in a submission of the question to the Board of Mediation.

In August, 1932, the Grand Central Terminal, which is covered by the agreement with the New York Central Railroad Co., had put into effect, without agreement with the employes and without notice and conference as required by Sec. 6 of the Railway Labor Act of 1926, a five day work week applicable to certain signal employes located at the Grand Central Terminal in New York City. The Brotherhood protested this action and upon refusal of the carrier to recede therefrom appeal was taken to the Board of Mediation and on Mar. 16, 1934, the matter was referred to arbitration as authorized by the Railway Labor Act. The Board of Arbitration held:

> "We therefore decide and so award that, because of the failure of the carrier to comply with the provisions of the Railway Labor Act in the particulars above noted (thirty days' notice and conference), the status of the signalmen placed on a five-day per week working basis by the action of the carrier effective Aug. 17, 1932, should be restored to the six-day per week working basis as the same existed prior to the action mentioned."

The Brotherhood thereupon, contending that the award of the Board of Arbitration was applicable on all New York Central Lines withdrew their consent to a shortened work week and demanded the immediate restoration of the six day work week except in such cases as the employes might otherwise agree. However, when the award was handed down June 20, 1934, Amendments to the Railway Labor Act had passed both houses of Congress and were awaiting approval by the President, which was given June 21, 1934.

Section 6 of the Amended Act reads:

> "Carriers and representatives of the employes shall give at least thirty days' written notice of an intended change <u>in agreements</u> affecting rates of pay, rules, or working conditions . . . * * * "
> (Underscoring shows amendment)

The provisions of the Railway Labor Act of 1926, upon which the Arbitration Award was based, having been changed by the amendment, the attempt of the Brotherhood to make the substance of the award effective on all New York Central Lines was therefore of no avail as the **agreements** between the parties did not provide for a six day work week.

The Amended Act gave to the parties the right to invoke the services of the National Mediation Board in disputes concerning changes in rates of pay, rules, or working conditions not adjusted by the parties, and the next move made by the Brotherhood was an attempt to secure a settlement of the dispute in conformity with the provisions of said Amended Act. Upon failure of the parties to adjust the dispute in conference the Brotherhood on Jan. 13, 1936, invoked the services of the National Mediation Board and the late James W. Carmalt was designated as Mediator in the case. After extended negotiations by the Mediator an agreement was finally reached between the parties under which the full six day work week was restored on the Harlem Division, and all other signal employes then working less than six days per week were placed on a five day per week basis. The effort to obtain a guarantee of six days' per week employment was evidently abandoned as the application for Mediation was withdrawn by the Brotherhood.

In March, 1937, fourteen national railroad labor organizations, including the Brotherhood of Railroad Signalmen of America, began nation wide proceedings for an increase in wages. There was also included in this request a demand for full time compensation for all regular assigned employes and two-thirds of full time compensation for all stand-by forces. These proceedings followed the usual course under the provisions of the Railway Labor Act, and, after it appeared that a deadlock had been reached in the negotiations, the National Mediation Board proffered its services as authorized by Sec. 5 of said Act.

Hon. Otto S. Beyer was designated by the Mediation Board to conduct the Mediation proceedings. After weeks of effort on his part to bring about a settlement of the controversy were without avail, and when the proffer of the Mediation Board was about to be withdrawn, an agreement was reached which was reduced to writing and signed by representatives of all parties and the Mediator. Except for the signatures, the agreement is set out in full below:

"NATIONAL MEDIATION BOARD

WASHINGTON

Case No. A-395

MEDIATION AGREEMENT

"In settlement of differences involved in National Mediation Board Docket Case No. A-395 and referred to in the joint proffer of mediation by the National Mediation Board dated June 29, 1937 to the Chairman of the Carriers' Conference Committee representing the participating carriers listed in Appendices A, B and C attached hereto and made a part hereof and to the Chairman of the Committee of the 14 participating labor organizations representing the employes with whom said carriers now have agreements determining the rates of pay, hours and working conditions of these employes, and under the provisions of the Railway Labor Act, as amended, it is mutually agreed that the questions in mediation, to wit:

Requests for

1. Increase in wages of 20 cents per hour, applied to hourly, daily, weekly, monthly or piece rates, so as to produce the same increase for all employes,

2. Guarantee of full time compensation for all regular assigned forces,

3. Guarantee of two-thirds of full time compensation for all standby forces,

shall be and are disposed of in their entirety as follows:

1. It is understood and agreed that all hourly, daily, weekly, monthly or piece rates will be increased effective August 1, 1937, in the amount of five cents (5¢) per hour, applied so as to produce the same increase irrespective of method of payment. This applies to all employes represented by the labor organizations signatory hereto.

2. Share-the-work practices however established will be terminated on request of the General Chairmen. No such request shall be made however prior to September 1, 1937. This is intended to bring about regular employment to such forces as are required by each carrier. Forces will be increased or decreased in conformity with the seniority rules, (or supplementary agreements while in effect) on the individual carriers.

3. This agreement shall continue in force from its effective date until changed or modified in accordance with the provisions of the Railway Labor Act.

4. The terms of this agreement are subject to ratification by the General Chairmen of the labor organizations signatory hereto.

Signed at Washington, D. C. this 5th day of August, 1937."

Under date of Aug. 19, 1937, the General Chairmen of the Brotherhood of Railroad Signalmen of America made written request upon all the carriers, parties to these disputes, to terminate share-the-work practices as of Sept. 1, 1937. This request was made in conformity with Item 2 of said Mediation Agreement.

On Sept. 21, 1937, the General Chairmen of the Brotherhood again wrote the proper officials of carriers substantially identical letters of which the following is typical:

"Referring to my letter of Aug. 19, requesting that the share the work practice be terminated as of Sept. 1, 1937, which request was in conformity with the provisions of Item No. 2 of the National Agreement made in Washington, D. C., August 5, 1937:

"Not having received a reply from you, and as the share-the-work practice is still being forced upon us, you will please consider this as formal notice of our claim for all time lost since Sept. 1, 1937 by all signal department employes on the New York Central, Lines East, due to the share-the-work practice or working less than six (6) days per week."

During September, October, November, and December, 1937, numerous letters were exchanged and several conferences held concerning the dispute as to the proper application of Item 2 of the Mediation Agreement. At the conclusion of a conference held in December at which no common understanding of the meaning of Item 2 could be reached carriers notified employe representatives that they intended to and would place all employes holding positions on which the work was continuous six days a week or more on a six day work week, and all employes holding such positions were placed shortly thereafter on a six day week employment basis.

It had developed at these conferences that the parties were in hopeless disagreement as to the meaning of Item 2 of the Mediation Agreement and in an effort to settle the matter the Brotherhood under date of Dec. 29, 1937, made application to the National Mediation Board for an interpretation of said Item 2 of said Agreement. It was joined in this application by the Brotherhood of Maintenance of Way Employes. After receipt of the National Mediation Board's interpretation of Item 2 of said Mediation Agreement the Brotherhood, relying upon said interpretation to support its position, still adhered to its previous contention that all share-the-work practices had not been discontinued. Carriers likewise continued to adhere to their earlier position. Not being able to reach an agreement on the matter the Brotherhood brought the dispute to this Division for determination.

The position of the Brotherhood, as shown by the claim filed in each Docket, is that the termination of share-the-work practices requires the restoration of the regular schedule of employment of six days' work per week for all signal department employes, which schedule of employment was in effect prior to the inauguration of such practices.

The position of Carriers is not so easily stated. They contend that the agreements with them contain no rule guaranteeing 6 days' work per week as is found in many other agreements and that none can be implied from the fact that prior to the inauguration of share-the-work practices signal employes were worked six days per week. (See Award 219). The Brother-

hood however, conceding the correctness of this bare legal contention, claims that this is not the issue in these cases. Secondly, carriers contend that signal forces have been spread as thin as efficient and economical maintenance will permit, and the restoration of six day assignments to employes now working less than six days per week could not be offset by force reductions without loss of efficiency.

As disposition of the claims in these cases is controlled by Item 2 of the Mediation Agreement and the interpretation placed thereon by the National Mediation Board, for ready reference the full text of the interpretation is set out below:

"INTERPRETATION 4 OF MEDIATION AGREEMENT
CASE NO. A-395

May 21, 1938

"This is a request for interpretation of a mediation agreement under Section 5, Second, of the Railway Labor Act which provides as follows:

'In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give an interpretation within thirty days.'

"The Brotherhood of Railroad Signalmen of America and the Brotherhood of Maintenance of Way Employes, signatories to a mediation agreement entered into August 5, 1937, by representatives of one hundred and twenty six carriers and fourteen labor organizations, applied to the Board for an interpretation of the meaning of Item 2 of this agreement, reading:

'Share-the-work practices however established will be terminated on request of the General Chairman. No such request shall be made however prior to Sept. 1, 1937. This is intended to bring about regular employment to such forces as are required by each carrier. Forces will be increased or decreased in conformity with the seniority rules, (or supplementary agreements while in effect) on the individual carriers.'

"The Board notified all those who hade signed the agreement of August 5, 1937, as well as the seventeen carriers who were in dispute with the two petitioning organizations as to the meaning of Item 2. Public hearings were held at the offices of the Board in Washington April 11 and 12, 1938, and subsequent to the hearings the parties filed briefs summarizing the evidence and supporting their positions.

"Briefly stated, the position of the two Brotherhoods is that share-the-work practices are responsible for working regularly assigned signalmen and maintenance of way employes less than the full work week of six days; that the term 'regular employment' in Item 2 was intended to mean six work days per week and hence when requested to do so by the General Chairmen, the carriers are obliged to restore such short-time employes to six days work per week, but that in this connection, the carriers may lay off junior employes to compensate for any added expense due to lengthening the work week. In short, the employes interpret Item 2 to mean that all maintenance of way and signal gangs working less than six days a week are engaged in sharing the work and that such gangs must be given full six days

employment when requested by the General Chairmen representing the employes.

"The carriers' position is that wherever employes are working less than six days per week they are not necessarily doing so as a result of share-the-work practices within the meaning of Item 2, nor that the term 'regular employment' as used in Item 2 necessarily means six days work per week. When the amount of work available for the minimum number of employes necessary to perform the work to be done or the service to be performed is not sufficient to occupy these employes six days per week, the carriers consider that no sharing of the work is involved and hence are not required to pay for six days when less than six days are worked under such circumstances.

"After careful consideration of the evidence presented at the hearing and arguments in the briefs, the National Mediation Board is of the opinion that Item 2 of the Mediation Agreement of August 5, 1937, does not guarantee employment six days per week to all signalmen and maintenance of way employes. Without a clear statement such as is found in many labor agreements on the railroads that six days work are guaranteed, the Board cannot interpret such meaning into the language of Item 2. The intent of the language seems clear to the Board that the provisions of existing agreements between the carriers and the brotherhoods are to cover this matter. If these existing agreements guarantee six days work, or if there are supplementary understandings mutually entered into controlling the length of the work week, then the carriers, of course, are obligated to live up to them. If, however, there are no such guarantees of understandings, then whatever existing agreements permit would not be contrary to Item 2.

"While short time work usually involves sharing the work, it does not necessarily constitute share-the-work practices in all cases. The circumstances and the long established practices on the railroads must be taken into account. Wherever in the past under existing agreements it has been customary to employ minimum gangs for less than six days a week because that was all the work that was available for the gangs, such procedures cannot be defined as share-the-work practices. Where, however, the parties to existing agreements mutually arranged to work short time rather than lay off junior employes, or where the management without the consent of the employes' representatives made such arrangements, these were clearly share-the-work practices. The share-the-work practices that must be terminated on request of the General Chairman, as provided in Item 2, mean such agreed-upon practices, or such practices as have been established arbitrarily by the management contrary to previously existing practices of laying off junior employes.

"Although no six-day guarantee is to be read into any existing agreement by interpreting Item 2 of the Mediation Agreement, neither does the language of this Item authorize the carriers to change any seniority rights under existing agreements. If any such agreement provides that in time of slack work junior employes shall be laid off, the parties are obligated to carry out these agreements. Item 2 was intended to abolish, on request of the employes, any arrangement by which senior employes were dividing work with junior employes contrary to existing agreements. Where, however, there is no such division of work but the carrier has the minimum gang that is necessary to do the available work and the total of this work amounts to less than six days a week, there is nothing in Item 2 to require employment for six days.

"It was agreed by the parties at the hearing that the Board should confine its opinion to the meaning of the language as contained in

Item 2. No evidence was taken in regard to the specific disputes on particular carriers, and the Board expresses no opinion as to the application of Item 2 to the facts on any road. The only question before the Board is the meaning of Item 2, and as to this our Interpretation is:

"1. Item 2 provides that carriers, when requested to do so by the General Chairmen, will discontinue arrangements for working employes less than six days per week when such arrangements are due specifically to work-sharing practices, such work-sharing practices being arrangements for working more employes fewer days per week in order that available work may be shared by a larger number of employes than the minimum necessary to do the available work or to protect the service.

"2. Item 2 does not guarantee six days work per week and neither does it change seniority rights and reduction of force provisions of existing agreements.

"3. When, upon request of the General Chairmen, carriers are required to terminate any arrangements involving share-the-work as explained above, they must revert to the provisions of their existing agreements and to the mutually recognized practices under those agreements."

The interpretation placed on Item 2 by the Mediation Board leaves nothing in doubt as to its meaning. It requires the termination of all share-the-work practices, however established, on request of the General Chairman. It does not guarantee employment six days per week. Such guarantee, if there is one, must be found in the agreements or in supplementary understandings mutually entered into controlling the length of the work week.

It is the contention of the Brotherhood that all share-the-work practices will never be terminated until all regularly assigned signal employes are restored to six days' work per week assignments. Carriers admit this has not been done but denies that working regular forces less than six days per week constitutes a share-the-work practice.

In support of its contention that the termination of share-the-work practices requires the restoration of the regular schedule of employment of six days' work per week for all signal department employes the Brotherhood proved, and it was not denied by carriers, that for many years prior to the inauguration of share-the-work practices all regularly assigned signal department employes worked on a six day week basis; that carriers had restored the six day work week on some parts of their lines; and that practically every other carrier, also subject to compliance with Item 2, in abolishing share-the-work practices had placed all regularly assigned signal department employes on a six day work week basis. The Brotherhood submitted exhibits showing the manner in which maintenance sections are set up by the carriers and contended these could readily be re-arranged so as to afford six days work to all employes regularly assigned to the maintenance of each section. The Brotherhood also submitted other collateral evidence in support of its contention, all of which has been carefully considered but will not be set out in this opinion.

Carriers rely almost exclusively upon their unsupported statement that signal service forces have been spread as thin as efficient and economical maintenance will permit and the restoration of six day assignments to the employes now working less than six days per week could not be offset by force reductions without loss of efficiency. They point out that they have restored to six day assignments all regularly assigned employes holding positions where the work is continuous for six or more days. They also point out that on many railroads, such as the Pennsylvania and Baltimore and Ohio, the agreements guarantee to signal department employes a six day work week.

Upon the record before it the Board is unable to determine whether or not there has been full compliance by carriers with Item 2 of the Mediation Agreement. The deficiency in the case made by the Brotherhood lies in its assumption that the termination of share-the-work practices of necessity requires the restoration of the regular schedule of employment of six days' work per week for all regular assigned signal department employes. Whether all share-the-work practices have been terminated is a fact which cannot be assumed but must be established on the record. While the working conditions that prevailed on the lines of these carriers prior to the inauguration of share-the-work practices, and the action of other carriers in restoring the six day work week following Item 2 becoming effective on their properties is pertinent evidence, it is not sufficient to warrant the assumption that share-the-work practices still prevail on the lines of these carriers. Other motives may have prompted the action of such carriers in the premises. The record shows that the number of signal department employes now employed on the properties of these carriers equals less than 50 per cent of the number employed prior to the inauguration of share-the-work practices. It cannot be assumed that efficient and economical operation of the properties of these carriers bears no relation to the number of employes required in signal service; yet it would be necessary to indulge in such assumption if the claim of the Brotherhood should be sustained on this record.

The evidence submitted by the Brotherhood would be pertinent in a Mediation proceeding to amend the contract to guarantee to signal department employes a six day work week, but it falls short of showing where and to what extent share-the-work practices are still in effect on the lines of the carriers involved in these cases.

The showing made by carriers to establish their contention that all share-the-work practices have been terminated by them is totally inadequate. Their unsupported statement that signal service forces have been spread as thin as efficient and economical maintenance will permit stands on the record as a statement of a naked conclusion. Facts to support it are entirely lacking and the record contains no other facts that support carriers' contention that all share-the-work practices have been terminated.

The controversy in these cases has revolved too closely around the demand of the Brotherhood for the restoration of the former schedule of employment of six days' work per week for all signal department employes. In disposing of the question before it this Division cannot overlook the fact that the Brotherhood has tried since 1934 to secure for signal service employes a guarantee of six days' work per week, its last effort in that behalf being contained in the demands made upon carriers in 1937 which resulted in the Mediation Agreement of Aug. 5, 1937. As pointed out above no such guarantee is contained in said Agreement or in any other agreement in effect between the parties. In the absence of any agreement guaranteeing such employment the Third Division is without authority to order its restoration. Under Item 2 of the Mediation Agreement it may direct the discontinuance of any share-the-work practices where such practices are shown to exist. But in these cases the Board is without authority to go beyond directing compliance with Item 2 of the Mediation Agreement.

What we have said above relates, of course, only to employes holding regular assignments on positions worked less than six days per week. There are many positions on the lines of these carriers where the work on the position is continuous and there may be others where six days' work per week is required. In all such cases the employes holding an assignment to any such position is entitled to six days' work per week, and any curtailment of that right would constitute a share-the-work practice and be in violation of Item 2 of the Mediation Agreement.

Item 2 of the Mediation Agreement provided that share-the-work practices would be terminated on Sept. 1, 1937 if the General Chairman so requested. Such request was made in these cases but the carriers involved

did not terminate any share-the-work practices, even in cases where they now admit it should have been done, until near the end of December, 1937. The Brotherhood claims compensation for all employes affected by the refusal of carriers to terminate such practices effective Sept. 1, 1937. Carriers' defense to the claims is that they were not obligated to put into effect the requirements of Item 2 of the Mediation Agreement until there had been conferences and the parties had attempted at least to reach an agreement as to its meaning and effect. The defense is insufficient to defeat the claims for compensation. The duty to terminate share-the-work practices rested upon carriers and no conferences were necessary to make Item 2 effective. Notice from the General Chairman was all that was required. Moreover, the record shows that carriers did not request a conference until sometime after Sept. 1, 1937. The claims of all employes holding assignments to positions worked six days or more per week are sustained.

Careful consideration has been given as to what disposition should be made of the claim that share-the-work practices still prevail in all those cases where employes hold regular assignments on positions worked less than six days per week. It appears to the Third Division, that the rights of the employe, or a group of employes, can never be established under the broad general claim made in these cases. Therefore, the Division is of the opinion that the general claim made in behalf of these employes for the restoration of the former schedule of employment of six days' work per week for all regularly assigned signal department employes should be dismissed without prejudice to the rights of any employe, or any group, or groups of employes to file claim for compensation.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 claim (a) should be dismissed without prejudice as to employes holding regular assignments on positions worked less than six days per week and sustained as to employes holding assignments to positions worked six days or more per week; and claim (b) should be sustained to the extent indicated in the opinion.

AWARD

Claim (a) dismissed without prejudice as to employes holding regular assignments on positions worked less than six days per week and sustained as to employes holding assignments to position worked six days or more per week; and claim (b) sustained to extent indicated by the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of June, 1939.