Award No. 859
Docket No. SG-805

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "Claim for compensation representing the difference in earnings under the regular six day work week schedule and the five day schedule arbitrarily imposed between March 1, 1938, and May 14, 1938, inclusive, for all signal department employes in the Houston Repair Shop."

EMPLOYES' STATEMENT OF FACTS: "Prior to the depression, the regular or normal work week of all signal department employes, including the Houston Signal Shop employes, was six days per week, except weeks in which holidays occur. From time to time during the depression the Carrier arbitrarily placed the 'share the work practice' into effect, however, on March 1, 1938, all signal department employes were working the regular or normal six-day work week.

"On February 24, 1938, the Carrier issued the following bulletin:

'TEXAS AND NEW ORLEANS RAILROAD COMPANY

MAINTENANCE OF WAY REPAIR SHOP

BULLETIN

To All Concerned:

Effective March 1, 1938, all Shop Signal Employes will go on a five (5) day week schedule, working Monday to Friday, inclusive.

F. J. Miller,
Shop Foreman
(Signed) F. J. Miller

Office of MofW
Repair Shop,
Houston, Texas
Feb. 24, 1938.

bc—Mr. R. W. Meek,
Mr. L. Y. Ballard'

"Thus the Carrier arbitrarily and without approval of the employes' representatives, as required by the amended Railway Labor Act, reduced the regular working time of all signal department employes in the Houston Repair Shop from six to five days per week, March 1, 1938.

in the rule above quoted are obviated, leaving the following,—

'* * * no compensation will be allowed for work not performed.'

It was considered just and reasonable by the Labor Board when it rendered its Decision No. 707 on February 13, 1922, and it is equally as just and reasonable today to follow the rule that no compensation should be allowed for work not performed. There was no work performed by the signalmen in the repair shop on the days for which the organization is attempting to claim time for them and the rule in the agreement provides that no compensation will be allowed for work not performed. The rule quoted should, therefore, effectively bar the attempt of the organization to claim compensation for work not performed, regardless of any decision that might be reached on the other points at issue. There is no basis for the contention of the organization in rule or practice or in the meaning or application of Item 2 of the Mediation Agreement of August 5, 1937, nor for the blanket claim that compensation should be allowed for work not performed.

"CONCLUSION:

"The carrier has definitely shown that there is no rule or practice in effect on these lines that can possibly sustain the contention the organization makes. It has been demonstrated beyond all controversy that this case is brought solely in an effort to secure a new rule to change existing practices.

"The fact has been stated and emphasized throughout this submission that the dispute, if this case may be so distinguished, arises over the meaning or application of an agreement reached through Mediation under the provisions of the Railway Labor Act and one in which the organization applied for and received the interpretation of the National Mediation Board, which did not sustain its contention but, on the contrary, confirmed the position of the carrier.

"It is affirmatively stated that all of the documentary evidence introduced herein has been presented to the General Chairman.

"As the carrier has not seen or been furnished a copy of the organization's ex parte submission it is not in position to anticipate the contentions that will be made or attempt to answer those contentions at this time. Every effort has been exerted to state all of the facts and to present documentary evidence in exhibit form, but as it is not known what the organization will present, it is requested that an opportunity be afforded the carrier, after being furnished copy of the organization's ex parte submission to make such written answer thereto as may be deemed necessary or proper."

There is in existence an agreement between the parties bearing effective date of May 1st, 1924.

OPINION OF BOARD: The issues involved in this case are similar to those involved in Docket SG-794, Award No. 854, as to Item 2 of the Mediation Agreement of Aug. 5, 1937, and the Interpretation placed thereon by the National Mediation Board. In so far as that opinion deals with those issues in the above referred to award, it is applicable to this case.

The claim for compensation presented in this case, however, differs materially from the claim in that case. Here, the claim for compensation is for the "difference in earnings under the regular six-day work week schedule and the five-day schedule arbitrarily imposed between March 1, 1938, and May 14, 1938, inclusive, for all signal department employes in the Houston Repair Shop" (Underscoring supplied). The question presented, therefore, by this claim is whether there is in effect any guarantee of a six-day work week schedule to signal department employes in the Houston Repair Shop.

The parties agree that the prevailing agreement contains no such rule. The Brotherhood presented its case upon the theory that the reduction of the work week from six to five days constituted a share-the-work practice prohibited by Item 2 of the Mediation Agreement of Aug. 5, 1937. Obviously this position is untenable when it is considered that the claim is for compensation for all signal department employes in the Houston Shop.

The claim presented in this case tends to point up more clearly, than do the claims in the other cases, the real dispute between the parties involved in all the Dockets referred to in the opinion in Award No. 854, namely, that Item 2 of the Mediation Agreement of Aug. 5, 1937, is a guarantee of six days' employment for all regularly assigned signal department employes. As pointed out in the opinion in Award No. 854, the Mediation Board held that Item 2 does not guarantee employment six days per week and for that reason the claim as presented must fail.

As was done in Docket SG-794, Award No. 854, and for the reasons there stated, the claim is dismissed without prejudice to the rights of any employe or group 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 the claim should be dismissed without prejudice to the rights of any employe or group of employes to file claim for compensation.

AWARD

The claim is dismissed without prejudice in accordance with the above opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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