

Award No. 1174

Docket No. MW-1180

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF AND SHIP ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: "First, that the Carrier violated Rule 7 of current agreement as well as Item 2 of the National Mediation agreement, Case No. A-395, in assigning W. J. Banks, J. T. Odom, John Norris, Elzey Morrison, A. L. Taylor, R. C. Harris, L. T. Bryant, Frank Furlow, C. L. Givens, and C. M. Bryant, B. & B. employes working in Foreman I. N. Farmer's crew to five days per week effective Nov. 5, 1938, and that these employes shall be restored to full time six days per week assignment.

"Second, that these employes be paid for time lost one day each week account of this improper assignment, since November 5, 1938."

JOINT STATEMENT OF FACTS: "During the year 1938, prior to November 5th, the Carrier employed three B. & B. gangs of ten men each, assigned to six days per week on the Gulf and Ship Island Railroad. Effective November 5, 1938, these three bridge gangs were reduced to five days per week."

POSITION OF EMPLOYES: "As stated in the Joint Statement of Facts, during the year of 1938 the Carrier employed three bridge and building gangs, consisting of the foreman and ten men in each gang, on its Gulf & Ship Island Division. Throughout the year, and up until November 5th, 1938, these gangs were working on full time six days per week assignments. Effective as of November 5th, 1938, mechanics, helpers and laborers in each of these three gangs were assigned to five days per week, yet the same number, that is, ten men beside the foreman in each gang, were retained.

"Rule 7 of agreement in effect between the Carrier and this Brotherhood reads:

'Rule 7. Gangs will not be laid off for short periods when proper reduction of expenses can be accomplished by first laying off the junior men. This will not operate against men in the same gang dividing time.'

"We maintain that assigning these men to five days per week, requiring them to lay off on Saturdays is actually submitting them to a short layoff each week. We are sustained in that, our position, by Award No. 372, rendered by your Honorable Board, where, in its opinion, the Board stated in part: 'There also appears to be no doubt that the substitution of a five day for a six day work week constitutes the laying off of gangs for short periods.' And again, by Award No. 758 of this Board, where, in its opinion, the Board stated: 'The manifest object of the rule is to provide that, when reductions are necessary, such work as remains will be accorded in conformity with strict seniority as opposed to the work being shared by all

"The carrier requests that the claim be declined."

OPINION OF BOARD: While this claim alleges a violation of Item 2 of the National Mediation Agreement as well as of Rule 7 of the current Agreement on this property, it will be unnecessary to consider separately Item 2 of the National Mediation Agreement, since its interpretation by the National Mediation Board in effect made the share-the-work practices subject to termination under Item 2 depend upon the provisions of the existing agreements of the various carriers. In these circumstances the disposition of this proceeding must depend primarily upon whether or not Rule 7 of the current Agreement has been violated; and if so, upon whether or not the relief sought in the claim is justified.

Rule 7 provides that "gangs will not be laid off for short periods when proper reduction of expenses can be accomplished by first laying off the junior men." This rule can be violated, even in the absence of a six-day guarantee provision, in so far as a six-day week actually in effect is reduced to a five-day week, which constitutes the laying off of gangs for short periods, when the necessary reduction of expenses can be accomplished by first laying off the junior men. See Award 372.

In the instant proceeding it appears that prior to November 5, 1938, when the five day week was established, the members of the crew here involved had been working for a period of about a year and a half on a six-day basis; that when the five-day week was established the size of this crew, as well as of the two others then operating, was not reduced; that the same sized crew had been maintained for a period of about two years; that at other times and also on other divisions smaller crews had been employed; that subsequent to November 5, 1938 forces were reduced by laying off altogether one of the three crews; and that later still the size of the two remaining crews was actually increased without altering the then-established five-day week. The principal explanation of this procedure offered by the carrier is that certain heavy work—replacing stringers—was required of this crew, which requirement rendered it impracticable to reduce the crew's size without impairing its efficiency. Even if this explanation were accepted at its face value (and the employees do not so accept it), it would not fully support the procedure of the carrier, since a very substantial amount of other types of work was required of this crew, which work could readily have been performed by a crew of a smaller size working on a six-day basis. Thus, under all the circumstances disclosed of record, it is the opinion of this Board that Rule 7, whereby the carrier expressly undertook the obligation here involved as to first laying off junior men, has been violated; and by virtue of this conclusion it is also found that there has been a violation of Item 2 of the National Mediation Agreement enjoining the termination of share-the-work practices.

It does not follow, however, that the claim as submitted can be fully sustained. All the members of the crew can be ordered "restored to full time six days per week assignment" and "paid for time lost one day each week . . . since November 5, 1938," as requested in the statement of claim, only on the basis of the existence of a six-day guarantee. No such guarantee is provided either by the current Agreement or by Item 2 of the National Mediation Agreement. Indeed, the very essence of the employees' position is that junior men should have been laid off in order to accomplish the purpose served by the establishment of the five-day week for the crew as a whole, and hence, in the very nature of the case, the claim cannot embrace relief for the entire crew. Furthermore, as stated in Award 372: "It must be kept in mind that neither the obligation imposed upon the carrier to lay off junior men nor the prohibition against its laying off gangs for short periods is an absolute one. It is required first to lay off junior men only when proper reduction of expenses can be accomplished by this method; and the laying off of gangs for short periods is prohibited only when proper reduction of expenses can be accomplished by first laying off junior men. As a practical matter, proper

reduction of expenses can conceivably be accomplished by either one of these procedures, or by a combination of the two."

Although both the current Agreement and the National Mediation Agreement have been violated, therefore, the extent of the relief to which the employees are justly entitled is yet to be determined; and since, for this purpose, the record is clearly inadequate, the proceeding will be remanded to the parties to determine through negotiation the extent of the justifiable relief, without prejudice, in the event of failure to reach agreement, to the resubmission of the proceeding to this Board on a record adequate for its sound and just disposition.

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 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 evidence of record discloses a violation of Rule 7 of the current Agreement and of Item 2 of the National Mediation Agreement, but is inadequate for a determination of the extent of the relief to which the employees are justly entitled.

AWARD

Claim sustained as to violation of Rule 7 of current Agreement and Item 2 of National Mediation Agreement; and proceeding remanded to the parties to determine through negotiation the extent of the justifiable relief, without prejudice, in the event of failure to reach agreement, to the resubmission of the proceeding to this Board on a record adequate for its sound and just disposition.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of August, 1940.