Award No. 1176
Docket No. SG-1191

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "That C. H. Ebel, Signalman, E. A. Schulenburg, Signalman, C. W. Baxter, Signalman, E. C. Kearney, Signalman, H. E. Daigle, Signalman, E. A. Frazee, Signalman, A. B. Stone, Signalman, F. M. Kimmons, Signalman, W. J. Webb, Signalman, A. N. Farley, Assistant Signalman, Willie Arnold, Helper, E. H. Hardaway, Helper, be compensated to the extent of one eight (8) hour day's pay per week, March 1, 1938, to May 14, 1938, a total of ten (10) days' pay each, because of the share-the-work practice placed in effect by the management in the System Signal Shop, Houston, Texas, in place of reducing the force by laying off the junior employes at said shop necessary to produce the desired saving in the payroll cost. Total claim for each employe involved is as follows:

C. H. Ebel,	Signalman	80¢	rate,	80	hours	$64.00	
E. A. Schulenburg,	"	80¢	"	80	"	64.00	
C. W. Baxter,	"	80¢	"	80	"	64.00	
E. C. Kearney,	"	80¢	"	80	"	64.00	
H. E. Daigle,	"	80¢	"	80	"	64.00	
E. A. Frazee,	"	80¢	"	80	"	64.00	
A. B. Stone,	"	80¢	"	80	"	64.00	
F. M. Kimmons,	"	80¢	"	80	"	64.00	
W. J. Webb,	"	80¢	"	80	"	64.00	
							$576.00
A. N. Farley, Asst.	"	71¢	"	80	"	56.80	
							56.80
Willie Arnold, Helper		54¢	"	80	"	43.20	
E. H. Hardaway "		54¢	"	80	"	43.20	
							86.40
						Total—	$719.20"

EMPLOYES' STATEMENT OF FACTS: "Prior to March 1, 1938, and subsequent to September 1, 1937, the employes in the System Signal Shop, Houston, Texas, were working full time of six (6) eight (8) hour days per week except for weeks in which legal holidays occurred.

"From time to time during the period of the depression and prior to the date of the Mediation Agreement (August 5, 1937) the carrier abitrarily 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.

repair force six days per week and they were worked five days and paid for five days. There is no rule or any guarantee of any kind that would require the carrier to pay them six days.

"CONCLUSION: The carrier has shown that no such claim as the organization is attempting to present has ever been handled with the management and it has also definitely shown that there is no basis in rule or practice for the claim. It has demonstrated beyond controversy that the case is nothing more than a continuation of previous efforts to obtain a rule, in the guise of an interpretation, that will guarantee Signal Department employes six days' work per week.

"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 with a copy of the organization's ex parte submission, it is not in a position to anticipate the contentions that will be made or to attempt to answer those contentions at this time. Every effort has been exerted to set forth all relevant argumentative facts, including documentary evidence in exhibit form, but as it is not known what the organization will present, the carrier desires an opportunity to make such additional answer thereto as may be deemed appropriate."

There is in existence an agreement between the parties bearing effective date of Feb. 16, 1922.

OPINION OF BOARD: The claim in this proceeding is an outgrowth of the claim as submitted in Docket SG-805, which was disposed of in Award 859. While the period involved (March 1, 1938 to May 14, 1938), as well as the factual basis of the dispute, is the same in both proceedings, the claims differ in these respects: in the original proceeding the claim called for compensation, measured by the difference in earnings under a six-day and a five-day work-week during the period involved, "for all signal department employes in the Houston Repair Shop"; in the instant proceeding the claim calls for compensation for the same period and measured in the same way for twelve designated employes (out of the fifteen embraced in the original claim), "because of the share-the-work practice placed in effect by the management . . . in place of reducing the force by laying off the junior men . . . necessary to produce the desired saving in the payroll cost." In Award 859 the claim as submitted in the original proceeding was dismissed —since it was deemed by this Board to have been based upon the existence of a six-day guarantee, which guarantee was found to have been provided neither by the Schedule Agreement nor by the Mediation Agreement; but this dismissal was entered "without prejudice to the rights of any employe or group of employes to file claim for compensation." The instant proceeding was initiated in conformity with the above saving clause, and it involves a consideration once more, with special reference to the basis of the claim as now submitted, of the requirements in the premises of both the Mediation Agreement and the Schedule Agreement.

Item 2 of the Mediation Agreement, which provides for the termination of share-the-work practices, has been interpreted by the National Mediation Board, and the interpretation so made, under date of May 21, 1938, is binding upon this Board in its disposition of this proceeding.

Under this interpretation, in which share-the-work practices are generally defined as "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," expressly provides that "arrangements for working employes less than six days per week" will be discontinued only "when such arrangements are due specifically to work-sharing practices." Whether or not they are "working-sharing practices" is made to depend upon the provisions

of the existing agreements and their application. Thus, in addition to finding that Item 2 provides no six-day guarantee, the National Mediation Board said, with reference to the matter which constitutes the basis of the instant claim: "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." And, in concluding its interpretation, the National Mediation Board said: "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."

There are many agreements between carriers and employes in which express provision is made for laying off junior men before reducing the work-week, as there are some in which a six-day guarantee is established. In the Schedule Agreement in effect on this property provision is made for neither of these situations. The only provision in the existing agreement restricting the carrier in the direction which forms the basis of the employes' claim applies only to the length of the work-day and does not embrace the length of the work-week. "Regularly established daily working hours," it is provided, "will not be reduced below eight (8) to avoid making force reductions . . ." It has been proposed by the signalmen's organization that this rule be modified to include, in conformity with rules existing on some other properties, "nor will the regularly established number of working days be reduced below six per week to avoid making force reductions"; but this proposal is still in process of negotiation and does not constitute a part of the existing contract between the parties. In effect, then, the claimants rely solely upon the seniority provisions of the Schedule Agreement. These provisions safeguard the rights of senior employes when forces are reduced or increased; they cannot, in and of themselves, be held to compel a reduction of forces, in contravention of the judgment of the carrier as to the needs of the service, for the purpose of providing full employment for the senior employes.

Nor has the practice under these rules on this property modified their express tenor in any way. The carrier concedes that it seeks to maintain a normal six-day week—that it reduces the work-week only when subnormal traffic conditions so demand; but this objective does not turn six-day assignments, when made at any time, into a compulsory obligation, in the nature of a guarantee, to maintain a six-day week. In point of fact, because of depressed business conditions, the assignments were for substantially less than a six-day work-week when the shop at Houston was first organized; and the subsequent establishment of a five-day week for like economic reasons and under the same Schedule Agreement, cannot properly be construed as resorting to a prohibited share-the-work practice.

In these circumstances—no violation being found of either the Mediation Agreement or the Schedule Agreement—it is unnecessary to consider the further contention of the carrier that it was maintaining the minimum-sized group essential to the efficient operation of the shop, and that even if junior employes were to be laid off, it is its function to determine, in the first instance, the character of the personnel adjustment to be made.

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 evidence of record does not disclose any violation of either the Mediation Agreement or the Schedule Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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