Award No. 2123
Docket No. MW-2018

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GALVESTON WHARVES COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the provisions of the agreement in effect between itself and its employes effective May 1, 1940, when it assigned Frank McPeters, Harry L. Moore, Matthew Harrison, E. C. Berndt, J. M. Hogan, W. C. Hankamer, A. C. Hansen, George Welch and Wm. Wedell to less than eight hours on Saturdays from May 1 to June 28, 1940; and

(2) That the Carrier further violated the agreement when it issued a bulletin again changing the assignment of claimants from five and a half days to four days per week, which assignment continued from June 28 to August 31, 1940.

(3) That the claimants be assigned to eight hours per day, six days per week.

(4) That claimants be compensated for time lost as a result of the Carrier's arbitrarily placing in effect assignment of less than eight hours per day, six days per week.

EMPLOYES' STATEMENT OF FACTS: Effective June 28, 1940, the Carrier issued a circular containing instructions that effective June 28, 1940, certain forces would be permitted to work only four days per week. This arrangement continued in effect from June 28, 1940, up to and including August 31, 1940.

Effective August 31, 1940, new instructions were issued, placing the employes listed in our claim on five and a half days per week.

POSITION OF EMPLOYES: Article V, Rule 1, reads as follows:

> "Gangs will not be laid off for short periods. When forces are reduced or positions abolished, seniority shall govern."

The above rule became effective May 1, 1940. The Employes contend that this rule was violated by the Carrier in this case, as the rule definitely provides that employes coming within its provisions shall not be laid off for short periods.

The Employes contend further that Article XV, Rule 1 has been violated for the period from August 31 to the present time, as a result of the Carrier's disregarding the basic day as provided therein. The rule reads:

"Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day, except as provided in Article VI, Rule 2, unless otherwise agreed to by representative and management."

Both of the rules mentioned above have a direct bearing on this claim. Rule 1 of Article V definitely and positively prohibits laying men off for short periods and under no circumstances can we accept the action of the management in placing these men on four days per week to constitute anything other than laying off for short periods.

The same is true in regard to the period from August 31 to the present time. The laying off of these employes for four hours one day in each week cannot be construed to mean other than "short periods." Article XV, Rule 1, definitely and positively provides that eight consecutive hours shall constitute a day's work. Under no circumstances can the provisions of these rules be changed except by mutual consent of the employes' representatives and the management.

The action taken by the Carrier in putting into effect four days per week from June 28 to August 31 and five and a half days per week from August 31, 1940, to the present time, without conference and agreement being reached, is a definite violation of the provisions set forth in the above mentioned rules.

If the Carrier is permitted to violate and continue to violate the provisions of the agreement in this manner, the purpose of collective bargaining is definitely destroyed.

We, therefore, ask your Board to sustain this claim.

POSITION OF CARRIER: Claim of the System Committee of the Brotherhood that the Galveston Wharves violated the provisions of the agreement in effect between them and its employes effective May 1, 1940, when we assigned Frank McPeters, Harry L. Moore and others to less than 8 hours on Saturdays from May 1 to June 28, 1940.

We did not violate any provisions of the contract, as alleged in employes submissions.

Employes in the Maintenance of Way Department work 5½ days per week when there is work to be done. This arrangement was in effect at the time we made the contract on May 1, 1940, and has remained in effect since that time, except when there was not enough work to justify 5½ days per week. Nothing was said about it in any of our committee meetings, and nothing was said about demanding 8 hours for Saturdays, on which days they work only four hours, except Mr. Jones, the General Chairman, endeavored to get us to agree to making the original contract to read 6 days per week, 8 hours per day, which we could not do. He then endeavored to get us to make a minimum week of 5½ days, which we could not do. The District Chairman, Mr. C. C. Ray, and the original committee were in agreement with us, that they would rather work only 4 hours on Saturdays. This was established as a custom a number of years ago on our property, not only with this department, but with others. The 8 hours per day mentioned in Rule 1 of Article 15 was not contemplated nor intended to mean that employes would work 8 hours on Saturdays, but was placed in there more as a basis for figuring overtime and to protect the men on a full working day, except Saturdays. There is nothing in the contract or in any agreement with the Maintenance of Way Employes stating that they would work any particular number of days per week. See copy of contract shown as an Exhibit.

OPINION OF BOARD: The question here is the same as that decided in Docket MW-2017, Award 2122. The Carrier substituted a shorter work week for that previously in effect. This constituted a violation of Article V, Rule 1.

Likewise Article XV, Rule 1, provides for a minimum of eight hours pay for a day's work.

There seems to be a dispute whether employes were on a five and a half or a six day schedule at the time the agreement became effective. In view of the construction which we have placed on Article XV, Rule 1, this is not a matter of importance, for full pay was required for the sixth day. It is not controverted that the assignment was subsequently reduced to four days.

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 Carrier violated Article V, Rule 1, and Article XV, Rule 1, of the agreement.

AWARD

Claims 1, 2, 3 and 4 are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.