

Award Number 5271

Docket No. TE-5096

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

ILLINOIS CENTRAL RAILROAD COMPANY

THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: Is it a violation of:

(a) The existing agreement to combine the duties of work at stations of agents and operators, or employees of the same craft, because of inauguration of the 40-hour work week.

(b) Paragraph (e) of Rule 19, Section 1, of the existing agreement in not establishing relief positions where there is not sufficient duties or work to justify it.

(c) Paragraph (b) of Rule 19, Section 3, of the existing agreement to assign monthly rated employees work to fill out their time on the sixth day of their weekly assignment.

CARRIER'S STATEMENT OF FACTS: On September 1, 1949, the following operation was placed in effect on the Iowa Division:

East Dubuque Operator will assume duties of Agent on Saturday; Agent and Operators jobs blanked on Sunday with Operator receiving a call as theretofore; relief man provided for Operator on Monday.

Manchester Agent will assume duties of Operator on Saturday; Agent job blanked on Sunday and relief man provided for Operator on Sunday.

Independence Agent will assume duties of Operator on Saturday; Agent job blanked on Sunday and relief man provided for Operator on Sunday.

Car Distributor Waterloo will assume duties of "AR" Operator on Saturday; Car Distributor job blanked on Sunday and relief man provided for "AR" Operator on Sunday.

Prior to September 1, 1949, the agents at Manchester and Independence and the car distributor at Waterloo received a monthly rate as full compensation for all services rendered. They are assigned at points where operation or service is necessary seven days per week. Prior to inauguration of the 40-hour work week, occupants of monthly rated positions at Manchester, Independence and Waterloo were assigned to work six and/or

created to settle such disputes, we leave to the Carrier to explain. Under the circumstances this Division is without authority to make any decision on any dispute based on Section 2 (b) of Rule 9 for the reason that the agreement between the parties does not contain an agreed to Rule. No answer to item (c) is possible.

Summary

With respect to item (a) the answer is in the affirmative.

With respect to item (b) the answer is in the affirmative.

With respect to item (c) an answer cannot be made.

There are no pending, unadjusted disputes within the meaning of section 3 (i) of the Railway Labor Act between the parties with respect to items (a), (b) and (c).

OPINION OF BOARD: These claims involve the question whether, under the inauguration of the 40-hour week and the prevailing rules, the Carrier may require a regular assigned employee of one position, not a relief position, to perform relief work on the position of another regular assigned employee on his rest days.

The submission in Docket No. TE-5096 is by the Carrier and consists of three hypothetical questions only, but they relate to specific disputes on the property which became the subject of specific claims in Docket Nos. 5013, 5014, 5015 and 5016. It is conceded by all hands that all five dockets concern the same subject matter and that the scope of the submission in 5096 is co-extensive with the submission comprised within 5013, 5014, 5015 and 5016. Consequently we consider them all together, except 5016 for the reasons stated in Award 5275.

The claims are based on Rule 19: Section 1 (e), (1), (2), (4) and (6); Section 1 (m). (3); and Section 3 (b), (1) above quoted.

In **5013—Waterloo** prior to September 1949 the Car Distributor position was monthly rated and had no assigned hours and no assigned rest day. The First Trick Operator position was a seven day hourly rated position and had assigned hours from 8 A. M. to 4 P. M. with one assigned rest day in each consecutive period of seven days on which a regular relief employee was assigned. On September 1, 1949, the Car Distributor was assigned a rest day of Sunday; and the First Trick Operator was assigned rest days of Saturday and Sunday during which he was relieved on Saturday by the Car Distributor and on Sunday by a regular assigned relief employee.

In both **5014—Independence** and **5015—Manchester** prior to September 1, 1949, the Agent position was monthly rated and had no assigned hours and no assigned rest day. The First Trick Operator position was a seven day hourly rated position and had assigned hours from 8 A. M. to 4 P. M. with one assigned rest day in each consecutive period of seven days on which a regular relief employee was assigned. On September 1, 1949, the Operator was assigned rest days of Saturday and Sunday during which he was relieved on Saturday by the Agent and on Sunday by a regular assigned relief employee.

At **Waterloo, Independence and Manchester**, where First, Second and Third Trick Operator positions existed, one regular assigned relief position was established at each point to perform service on both of the two regular assigned rest days of the Second Trick (Monday and Tuesday) and of the Third Trick (Friday and Saturday). On the other hand, for the First Trick Operator positions, but one regular assigned relief position was established at each point to perform service on only one of the two regular assigned rest days, Sunday; and the Car Distributor at Waterloo and the Agents at Independence and Manchester were assigned to perform the service of the First Trick Operator position on Saturday.

Prior to September 1, 1949, the Agents at Manchester and Independence and the Car Distributor at Waterloo received a monthly rate as full compensation for all services rendered. They were assigned at points where operation or service was necessary seven days per week. Prior to inauguration of the 40-hour work week, occupants of monthly rated positions at Manchester, Independence and Waterloo were assigned to work six or seven days per week in accordance with service requirements. Concurrently with the establishment of the 40-hour week, stations, division and general offices were closed on Saturdays. The assignments of monthly rated employees were reduced from seven to six days per week in accordance with Rule 19, Section 3.

FIRST. The Rule (Rule 19, Section 1) recognizes five, six and seven-day positions. A five-day position is said to be one the duties on which can reasonably be met in five days; and a six-day position is said to be one where the nature of the work is such that employees will be needed six days each week. Under the Carrier's method of assignment, the positions relieved by the Claimants appear to be seven-day positions. The duties of these positions existed every day of the week. The most that the Carrier contends is that "there is not sufficient duties or work" on Saturdays to justify the establishment of relief positions or the employment of extra men. It is said that this has come about by the closing of offices and stations on Saturdays as well as Sundays. But this does not put Saturdays in any different case from Sundays on which regular relief was provided.

The Rule requires the establishment of "all possible" regular relief positions; and there is no showing that this was not possible on Saturdays as well as Sundays. The Rule also permits the use of extra men where it is "not practicable" to furnish regular relief. What is "not practicable" is limited to two causes: the number of rest days involved or the location of positions; and here again there is no showing that either of these two factors made it impracticable to assign extra men. Nowhere does the Rule expressly dispense with the requirement of relief or extra men by reason of diminished quantity of work on one day of the assignment; and it is difficult to reach any such conclusion by implication in the face of the two express dispensations which exclude it. We find nothing in the 40-Hour Week Emergency Board Report at variance with what appears to us to be plain language in Rule 19.

In view of these considerations, we conclude that the Rule required the establishment of regular relief assignments for these positions on Saturdays as well as Sundays, or the use of extra men where this is not practicable because of number of rest days involved or because of location of positions.

It is settled by Awards 4192, 4387, 4728, 4775, 4815 and 4883 that, since the Saturday work was not assigned to regular relief positions or to extra men, the work belonged to the incumbents of the positions (see also Awards 3760, 3979, 4244, 4246, 4307, 4500, 4817, 5117 and 5195).

Awards 911, 1314, 4135 and 4821 cited on behalf of the Carrier are not contrary to such a conclusion. In Awards 911, 1314 and 4821 the right to abolish positions was involved, not the question how relief should be furnished to establish positions on rest days. Award 4135 simply holds that a monthly rated employee, whose monthly rate covered services for all Sundays and holidays, was not entitled to pay for a "call" for Sunday or holiday work which was his own work.

SECOND. Since most of the awards cited above antedate the establishment of the 40-hour week, we reconsider them, in view of Section 3 (b) of the Rule to the effect that monthly rated employees "may be used on the sixth day of the work week to the extent needed without additional compensation". The Carrier contends that this section of the Rule specifically authorized the use, as reliefs, of the monthly rated Agents at Independence and Manchester and the Car Distributor at Waterloo.

If it had been contemplated that these monthly rated employees were to be regularly used for the purpose of performing regular full day assignments of relief work on their sixth day of work, one would normally expect a stronger call for their services on the sixth day than a call limited "to the extent needed". Moreover, the requirement of the establishment of all possible regular relief assignments is essentially inconsistent with the use of a regular assigned employee to perform relief work. Finally the plain objective of the Rule is a 40-hour week for all employees, including monthly rated employees. The fact that the Rule permits them to be worked the sixth day "to the extent needed" appears most reasonably to be no more than a transitional compromise between opposing convictions whether the requirements of these particular positions could be met within five days or six. In view of these considerations we conclude that this section of the Rule does not authorize the use of monthly rated employees on the sixth day except to the extent needed by reason of the quantity or nature of their own work, not somebody else's.

THIRD. The basis of these claims is improper denial of the right to work on a rest day. The Claimants would have been entitled to the overtime rate had they worked the rest days; but if relief or extra men had worked, they would have been entitled to the straight time rate. It is settled by a long line of awards listed in Award 4244 that the Claimants are entitled to no more than the straight time or pro rata rate. See also Award 4728.

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 Agreement was violated.

AWARD

The three questions propounded in the Statement of Claim are each answered: yes, in the manner and to the extent set forth in the foregoing opinion and in the opinion in Award 5275.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.