Award No. 5294
Docket No. CL-5254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Ogden Union Railway and Depot Company and/or its officers violated the terms of the existing agreement

(a) By failing or refusing to permit Mr. C. E. Spencer to work on Manifest Passing Position No. 7-14 on December 15, 1949; and

(b) By failing or refusing to permit Mr. R. I. Spencer to work on Head 922 Position No. 7-190 on December 15 and 16, 1949; and

(c) The Company shall now compensate Mr. C. E. Spencer for 8 hours' time at the established rate of Manifest Passing position for date of December 15, 1949; and

(d) The Company shall now compensate Mr. R. I. Spencer for 8 hours' time at the established rate of Head 922 Clerk position for each of the dates of December 15 and 16, 1949.

EMPLOYES' STATEMENT OF FACTS: The Ogden Union Railway & Depot Company is a joint terminal facility of the Union Pacific and the Southern Pacific Railroad Companies which terminal Company operates only at Ogden, Utah.

The claimants hereafter named are employed at said terminal at Ogden, Utah where this dispute arose, and they have established seniority dates as follows:

R. I. Spencer	Sen date	10- 9-35
C. E. Spencer	" "	1-23-37

All work and positions herein referred to is within the jurisdiction of the agreement between the disputant parties—and said disputant parties are Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

Prior to Dec. 14, 1949 Mr. C. E. Spencer was assigned to position of Manifest Passing Clerk, position No. 7-14, with regularly assigned rest days of Friday and Saturday each week. Prior to this same date Mr. R. I. Spencer

employes to work their assignment, then the claim would have been for duplicate pay to the relief employes.

In order to establish the five-day week required by the National Agreement, all current rules in conflict therewith had to be revised; it was not the intention of the agreement to require any carrier to be subject to duplicate pay penalties, nor be required to work two employes on one position on any one day, but that is the contention of the chairman in this claim.

The chairman has also referred to Rule 16 as a guarantee to the claimants of five days' work each week. Rule 16 as revised by the 40-Hour Week Agreement effective September 1, 1949, and Decision No. 15 of the 40-Hour Week Committee, reads as follows:

"16. Weekly Guarantee: Regularly assigned daily rated employes shall not be reduced below five days per week, except that this number may be reduced in a week in which holidays occur by the number of such holidays, however, such reduction may be made only when a specified holiday is observed on an assigned work day of an individual employe."

Rule 58 reads in its entirety as follows:

"58. When Awarded Bulletined Position: When an employe bids for and is awarded a bulletined position, his former position shall be declared vacant and bulletined. An employe having been assigned after bidding in a bulletined position shall be required to accept the assignment."

It is the further position of the carrier that Rules 16 and 58 entitle the employes who bid in and were assigned the relief positions, to the compensation under Rule 16 and ownership of the assignments on these days under Rule 58.

The chairman in his letter of March 14, 1950 (Exhibit "E") makes the further statement, "A work week must naturally begin with the first work day following rest days." To this we agree and as applicable to the claimants, their work week would begin following the rest days after December 15 and 16, 1949. Rest days on a position cannot under any schedule rule or decision of 40-Hour Week Committee belong to relief clerks and regular clerks at one and the same time. Work on such days must be either relief work or regular work—it cannot be both, and the Board is respectfully requested to so decide by denying the duplicate pay requested by the employes in this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: After the institution of the 5-day week the Carrier abolished 16 positions, 8 of which were regular positions and the remaining 8 rest-day-relief positions. Thereupon, the Carrier reestablished 9 of these positions, 3 as regular positions and 6 as rest-day-relief positions. The Carrier also changed the assigned rest days of two positions, but did not abolish the positions. The claims arise from the change in the assigned rest days of these two positions.

The change in the assigned rest days of the two positions was made effective Wednesday December 14, 1949 which fell during the work week of both positions. On one position the two rest days were set back one day, so that the first new rest day fell on the fifth day of the Claimant's work week. And on the other position the two rest days were set back two days, so that the first two new rest days fell on the fourth and fifth days of the Claimant's work week.

The claims are based upon the five-day weekly guarantee contained in Rule 16.

FIRST. The guarantee to regular employes contained in Rule 16 is nonetheless good because, under the Carrier's method of assignment, it ran

afoul of the obligation to establish relief positions contained in Rule 3½. Both Rules came into the Agreement at the same time by the same amendment; and if guarantees to regular men and to relief men overlap, neither of the guarantees is pro tanto diminished to the extent of the overlap (Awards 3923, 3925, and 5066; see also Awards 783, 3661 and 4539).

Prior to the adoption of the 40-hour week, the parties had a specific rule which governed changes in assignments of rest days.

SECOND. Rule 48 and the Note give some indication of when positions can be abolished; and according to the discussions which led to the adoption of the Note in 1928, the problem then at hand was, in principle, the point at issue here:

> "In changing shifts at the yard office it is often necessary to work an employe more than seven days without relieving him, unless we relieve him two days within one week's time."

The Brotherhood contends that the principle of the Rule must be still applied in order to carry out the intent and purpose of the new 5-day guarantee; and the Carrier contends that the Rule is a dead letter because it is inconsistent with the new requirements of the 40-hour week. We agree with the substance of both contentions.

The Rule is not a dead letter. The parties left it in the Agreement; and it is a topic which the parties elected to cover by specific agreement and they have lived with it for twenty years. On the other hand, the Rule does not represent agreement on the 5-day week and we could apply it here only by torturing plain language, such as, for example, reading "first two new assigned days off" instead of "first new assigned day off."

It is the function of this Board to interpret. not to write, agreements. We see no way of disposing of these claims without either reading new words into Rule 48 or deleting it from the Agreement altogether. As we view it, both of these alternatives run contrary to the essential intention of the parties.

In these circumstances we refer the case back to the property pending clarification of the intentions of the parties with respect to Rule 48 and Note in the setting of the 40-hour week.

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 it cannot be determined whether the Agreement has been violated until the parties reach complete agreement on Rule 48 and Note.

AWARD

The claim is referred to the parties pending complete agreement on the Rule.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 30th day of March, 1951.