

Award Number 5545
Docket Number SG-5303

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company:

(a) That the Carrier violated and continues to violate the Signalmen's Agreement when it assigned rest days of Sunday and Monday, since September 1, 1949, to certain employees working periods of five days each week, except when holidays occur.

(b) That these certain employees should have been assigned Saturdays and Sundays as their rest days.

(c) That each employee affected and improperly laid-off on Mondays be paid eight (8) hours at his straight-time rate for all such Mondays not worked.

(d) That each employee affected and improperly assigned to work on Saturdays be paid the difference between eight (8) hours straight-time he was paid for and eight (8) hours at the time and one-half rate claimed.

EMPLOYEES' STATEMENT OF FACTS: Following the negotiation of rules, dated March 19, 1949, by a National Conference Committee establishing a shorter work week consisting of five eight-hour days, the Carrier placed into effect, as of September 1, 1949, the shorter work week.

Hourly paid employees on five-day positions were assigned Saturday and Sundays as their rest days, except that occupants of certain positions were improperly assigned Sundays and Mondays as their rest days.

The positions assigned rest days of Sundays and Mondays on the territory under the supervision of Mr. M. A. Otterbourg are shown in the bulletin reproduced herewith:

"SOUTHERN RAILWAY SYSTEM
OFFICE OF SIGNAL & ELECTRICAL SUPERINTENDENT
CHARLOTTE, N. C.

August 22, 1949.

"TO ALL EMPLOYEES SIGNAL & ELECTRICAL DEPARTMENT:

"Effective September 1, 1949, the 40-hour week will be inaugurated and the following employees are assigned Saturdays and Sundays each week:

Division, National Railroad Adjustment Board has no authority to sustain the claim.

For all of the reasons given, the claim should in all things be denied and the Carrier respectfully requests that the Board so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: We are called upon in this dispute to interpret the Forty-Hour Week rules for non-operating employees.

The Claimants challenge the Carrier's action in staggering the positions of signal maintainers and assistant signal maintainers at nine stations, and establishing for the employees there employed a work week from Tuesday through Saturday, with Sunday and Monday as rest days.

In essence, the position of the Employees is that the claimants are filling positions, the duties of which can reasonably be met in five days; that such positions are five-day positions coming within Rule 30(c)(1), and that the assigned work week should therefore have been Monday through Friday with Saturday and Sunday as rest days.

The Carrier's position briefly is that the positions in question are six day positions and that the work weeks in question were staggered in order to meet the Carrier's operational requirement.

The relevant portions of the rules in question read as follows:

"RULE 30.

(b) The expressions 'positions' and 'work' when used in this agreement refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

(c) The carriers will establish effective September 1, 1949, for all employees, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of the Chicago Agreement of March 19, 1949.

(1) Five-Day Positions:

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

(2) Six-Day Positions:

Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(3) Seven-Day Positions:

On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday. Where the nature of the work is such that it is necessary and essential to the service for a position to be filled seven days each week, such position may be established.

(4) Regular Relief Assignments:

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving.

(5) Deviation from Monday-Friday Week:

If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of paragraph (c)(1) of this Rule 30, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under agreement rules."

The Employees argue that since signalmen now work five days a week, the positions are five-day positions under the agreement, and that in any event there is nothing about the work of signalmen that requires a deviation from a Monday to Friday work week.

All positions would be five day positions if the test is the number of days now worked by employees. This result was not intended by the parties. It is important to note that both the Chicago Agreement of March 19, 1949, and the Rules of the parties contain the following:

"The expressions 'positions' and 'work' when used in this agreement refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees." (Rule 30(b)—Parties' agreement and Article II, Section 1—Note.)

It is clear that it is not the work week of the individual employees that controls, but the "service, duties, or operations necessary to be performed the specified number of days per week."

Prior to September 1, 1949, the employees here involved were assigned to work a six-day week, Monday through Saturday (except weeks in which holidays occur), and in addition held themselves available for call over Sundays and holidays in accordance with the Call Rule (Rule 36). Employees standing by on Sundays and holidays were paid a minimum of four hours at the pro rata rate for the Sunday or holiday on which held subject to call, and if called, they were additionally paid in accordance with Rule 35. The Call Rules were continued without change after September 1, 1949, when the 40-hour week commenced. It thus appears that prior to the establishment of the 40-hour week, the parties apparently recognized that the duties and operations to be performed by signal maintainers and assistant signal maintainers were such that employees were needed six days each week and on alternate weeks signal maintainers were needed seven days a week.

It is, of course, an obvious fact that interlocking plants and CTC (Centralized Traffic Control) systems are in service both night and day, seven days a week, at strategic points on the Carrier's lines and that trains are operated both night and day seven days a week. These facts did not change when the 40-hour work week was adopted.

In Award 5393 involving the same Organization but a different Carrier and the same issue as here presented, we said:

"Carrier makes an impressive case for the need for six-day signal maintenance service on its lines. Further, and of great significance, is the fact that it is not something born as of September 1, 1949, or of the date of the ruling by the Presidential Emergency Board imposing the five-day work week. Instead it is based upon operational practices which have existed over a period of many years. We cannot presume that Carrier long indulged in a useless waste of funds and no sudden technological change is shown to have occurred in 1949 to alter the need. There is nothing shown by the record which convinces us that Carrier acted arbitrarily in continuing the six-day signal service practice. Accordingly, we find that the nature of the work is such that employees will be needed six days each week and the case is governed by Rule 11 (b) (2) and not Rule 11 (b) (1). Carrier's determination of the question is reasonable and must stand."

The facts in this case support the Carrier's position as strongly as the facts involved in Award 5393.

The employees have not shown that the nature of the operations is such that the employees will not be needed six days a week at these points. On the contrary, the record made before this Board would bring this case within the language of Rule 30 (c) (2), "**** the nature of the work is such that employees will be needed six days each week ****."

We hold that the positions in question are six day positions and not five day positions. In this connection we call attention to the statements contained in the letter of February 27, 1949, written by the Emergency Board in response to the Carrier's Conference Committee and the Sixteen Cooperating Railway Labor Organizations. We call attention particularly to the following paragraph:

"The next question relates to the staggering of the work weeks and Saturdays and Sundays as the days of rest. Obviously, if the work week is staggered some employees cannot have these specific days off. That the Board expected deviations from this pattern is made abundantly clear by its repeated use of the expressions 'staggered work week,' 'in accordance with operational requirements,' and 'so far as practical.' The great variety of conditions met in the railroad system of the country and even varied conditions on a single railroad require flexibility on this matter. The tenor and substance of the Board's discussions and recommendations show definitely that the Board intended to permit the Carriers to stagger work weeks. In contrast with the obligation of the Carriers to sustain the burden of proof in the matter of non-consecutive rest days, it is for the Employees here to show that some particular operational requirements of the carriers are not better met by having the work weeks staggered." (Underlining ours)

On behalf of the Employees it is contended that even if the positions are six day positions, Rule 30 (c) (4) makes elaborate provisions for relief positions both regular and irregular, and that the parties neither expressly nor by implication stated the rules pertaining to relief assignments were an alternative solution. In effect, what is argued for is that the Carrier should have used relief workers instead of providing for staggered work weeks.

We have carefully considered the history and background of the 40-Hour Week Agreement and the language of the Agreement. We cannot agree that an effort to establish relief positions is a condition precedent to staggering work weeks as contemplated under Rule 30. To begin with, there is nothing in the language of Rule 30 which specifically requires that an effort be made to provide relief assignments before staggering work weeks. While it is true

that both the provisions for staggering work weeks and providing relief assignments are part of the same Rule, the use of one is not made conditional on the other.

The letter of February 27, 1949, of the Emergency Board clearly indicates that the Board considered staggered work weeks and relief assignments as alternatives and as serving different although related purposes. Thus the Board stated:

"Recommendation No. 1 deals with the establishment of a shorter work week which was the primary aim of the Board. It is well to bear this in mind. The Board intended to have the employees achieve a work week of five 8-hour days, without loss in earnings. Its purposes were two: (1) to give employees 2 days rest each week and (2) to spread and maintain employment. Its purpose was not to obtain more pay for employees through overtime on the 6th and 7th day of the week, and it sought through the penalty provisions to discourage such work schedules.

"A work week of 40 hours, consisting of 5 days of 8 hours each, with 2 consecutive days off in 7 was recommended. This represents the major difference between the parties, because on page 18 of the report, following a description of the continuous nature of railroad operations and of the methods used in other industries, the Board said:

'Consistent with their operational requirements, the Carriers should allow the employees two consecutive days off in seven and so far as practicable these days should be Saturdays and Sundays.'

"This sentence if read and compared with other expressions in the report has a plain meaning. 'Consistent with their operational requirements' qualifies the entire 40 hour program recommended. That program has a combination of elements: five 8-hour days, 40 hours per week, two consecutive days off each week, Saturdays and Sundays as the rest days, staggered work-weeks and relief assignments.

"When an operational problem is met it does not automatically follow that the solution is to make the days off non-consecutive. Other possible solutions may be found by hiring additional relief or extra men who may be used to relieve on combinations of 6 day and 7 day positions. Days other than Saturday and Sunday may be assigned as rest days, or weekly rest days may be accumulated and longer consecutive rest time substituted periodically. Some of the relief or extra men may have non-consecutive rest days, and some employees may be kept on duty for overtime work. Other suitable or practical plans may suggest themselves to one of the parties and meet with the approval of the other. The least desirable solution, to be used only as a last resort, in keeping with the main purpose of the Board, would be to work some regular employees on the 6th and 7th days at overtime rates and thus withhold work from additional relief men."

It will be noted that the two items in question are referred to as elements of the 40-hour program. Staggering work weeks were intended as a device to reduce the expense to the Carrier of converting from a six-day to a five-day week. Relief assignments were intended as a device to eliminate work by regular employees on the sixth and seventh days at overtime rates. One of the objectives of the 40-hour week, that of spreading work, would be frustrated if regular employees were so used. Hence, the admonition of the Board, "The least desirable solution, to be used only as a last resort, in keeping with the main purpose of the Board, would be to work some regular employees on the 6th and 7th days at overtime rates and thus withhold work from additional relief men." Thus the Emergency Board in recommending Rule 30 (c) (4) undoubtedly had in mind the situation when the work week could not be

staggered and the carrier would be tempted to work the regular employees on the rest days at overtime rates, or where the amount of work necessary to be performed on the rest days was in excess of that which could be performed by the employees assigned to work on such days.

Moreover, it is difficult to reconcile the contention that staggered work weeks and relief assignments are dependent provisions with the final decision of the Emergency Board which denied the Organization's request for a uniform Monday to Friday work week with Saturdays and Sundays as the rest days for all regular employees. The decisions establishing the 40-hour work week and subsequent opinions clearly show that the provision for staggered work weeks was intended among other reasons to reduce expense to the carriers. The Board which wrote the 40-hour decision expressly rejected the Organization's request for a uniform Monday to Friday work week. Various estimates of costs of the 40-hour work week to the carriers were considered. The Board in estimating the cost did so on the basis of staggered work weeks, after both parties had submitted estimates of both staggered and non-staggered 40-hour weeks. (Report to the President by the Emergency Board — NMB Case A-2953, pp 18-20, 23, 30, 31.) If the Carrier has any burden under Rule 30(c)(4), it is to show that regular employees must be worked overtime on Saturday and Sunday in lieu of establishing a regular relief assignment.

While we find we must deny the instant claim, we do not wish to leave the impression that the Carrier is free to establish 6 or 7 day positions at will. The Organization may freely challenge assignments with staggered work weeks if the Carrier's operational requirements do not require staggered work weeks.

Consistent with the policy of this Board that an award should be limited to the precise issue presented to the Board in the particular case, our decision deals exclusively with the claim made relative to the particular positions here involved and is not intended as a general precedent.

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 Carrier did not violate the agreement.

· AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of November, 1951.