Award Number 5549
Docket Number MW-5399

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) That the Carrier violated the provisions of the effective agreement when it assigned Frank J. Baker, second trick water service pumper at Calexico, California, to a 5-day work week of Wednesday through Sunday, instead of assigning him to work Monday through Friday;

(2) That Frank J. Baker be paid the difference between what he has received at the straight time rate of pay and what he should have received at his time and one-half rate of pay for all Saturday and Sunday service rendered subsequent to September 1, 1949;

(3) That Frank J. Baker be compensated at his respective straight time rate of pay for each Monday and Tuesday subsequent to September 1, 1949, that he was denied the privilege of working his regular assignment.

(4) That Frank J. Baker be paid the difference between what he received at his regular straight time rate of pay for services rendered on Labor Day, September 5, 1949, and on all subsequent holidays, and what he should have received at his respective overtime rate of pay.

EMPLOYES' STATEMENT OF FACTS: Subsequent to September 1, 1949, and prior to July 12, 1950, the carrier employed two Water Service Pumpers at Calexico, California.

One pumper was assigned from 8:00 A.M. to 12:00 noon, and from 1:00 P.M. to 5:00 P.M., Monday through Friday, with rest days of Saturday and Sunday.

The claimant, Pumper Frank J. Baker, was assigned from 8:00 P.M. to 12:00 midnight, and from 1:00 A.M. to 5:00 A.M., Wednesday through Sunday, with rest days of Monday and Tuesday.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit and therefore submits that it should be denied.

(Exhibits not reproduced.)

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

The Organization claims the Carrier violated the provisions of the effective agreement when it assigned claimant, a pumper, to a 5-day work week of Wednesday through Sunday, instead of assigning him to work Monday through Friday.

Prior to September 1, 1949, carrier maintained two pumper positions at Calexico, California. The assigned work weeks of position of first pumper was 8:00 A.M. to 12:00 Noon and 1:00 P.M. to 5:00 P.M., daily except Sundays and holidays, and the assigned work week of position of second pumper was 8:00 P.M. to 12:00 Midnight and 1:00 A.M. to 5:00 A.M., daily except Sundays and holidays. The regular assigned incumbents were used eight hours on Sundays and holidays and paid overtime at time and one-half therefor. Claimant was assigned to the position of second pumper.

Effective September 1, 1949, the work week assignment of the first pumper was changed to five days, Monday through Friday, and the work week assignment of the claimant, second pumper, was changed to five days, same hours, Wednesday through Sunday.

For service rendered on position of second pumper, commencing September 1, 1949, claimant was allowed eight hours compensation at straight time rate for each assigned work day, except that when one of such assigned work days fell on a holiday, the claimant was allowed eight (8) hours at time and one-half rate.

On July 12, 1950, certain automatic equipment was installed and both positions of pumper were abolished.

One of the contentions of the Organization in this case is that the work week in question is a 6-day work week and not a 7-day work week. The portion of Rule 23 relating to 6 and 7 day positions reads as follows:

> "Six-day Positions—where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.
>
> "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."

Prior to September 1, 1949, the assigned work weeks of the pumpers in question were from Mondays to Saturdays with Sundays the designated rest days. It is clear, therefore, that the carrier regarded the positions as 6-day positions and not 7-day positions. The fact that incumbents were regularly called to perform work on Sundays on an overtime basis would not change the 6-day positions to 7-day positions. Neither has the Carrier shown any change in operations which would justify establishing the positions as 7-day positions. This circumstance distinguishes this case from the fact situation involved in Award 5247 relied upon by the Carrier.

The Organization also contends that the Carrier did not comply with the requirements of Rule 23 headed "Regular Relief Assignments." The provisions referred to are identical with those referred to in Award 5545. In that case

we discussed at length the principles applicable to the administration of a 40-hour week, and set forth the reasons why we did not believe the contention is sound. We adhere to the principles stated in that Award.

Claimant makes two claims; one for the days that he was held out of service, and the other for the overtime rate for the work that he was required to perform on rest days. Inasmuch as the assignment should have been on a 6-day basis rather than on a 7-day basis, the claim properly should be for one day held out of service at a pro rata basis and for the overtime rate on rest day. This Board has frequently ruled that penalties cannot be pyramided. We have also ruled that in the absence of exceptional circumstances requiring a contrary conclusion, where two or more violations carrying different penalties are established, the higher of the several penalties involved is the one to be imposed. See Award 5423. Accordingly, in the case the appropriate penalty is one day's pay on a pro rata basis for each week during the period in question.

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

The Carrier violated the agreement to the extent indicated in the Opinion.

AWARD

Claim sustained in part and denied in part in accordance with above Opinion.

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.