Award No. 5997
Docket No. CL-5981

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes:

(1) That the Carrier violated the Agreement between the parties, effective May 14, 1948, as amended by Memorandum of Agreement, effective September 1, 1949, when, in changing the work week and assigned rest days of position of Second Trick Engine Crew Dispatcher at Concord, N. H., held by Clayton J. McDonald, effective Sunday, May 14, 1950, it did not accord the said Clayton J. McDonald two (2) consecutive rest days and declined to compensate him for the sixth day worked within the payroll period ending Thursday, May 18, 1950, in accordance with the said Agreement between the parties; and

(2) That the Carrier shall now be required to compensate the paid Clayton J. McDonald for four (4) hours extra pay at the straight time rate of his position—$12.488 per day, representing the difference between what he was paid (eight hours at straight time rate) and what he should have been paid (eight hours at time and one-half rate).

STATEMENT OF FACTS: Clayton J. McDonald holds a regular position of Second Trick Engine Crew Dispatcher at Concord, N. H., Engine House and is a part of the regular force at that point.

Effective September 1, 1949, the Carrier in inaugurating the 40-Hour Work Week, established this position with a work week of Tuesday to Saturday, inclusive; assigned rest days Sunday and Monday.

On May 12, 1950, the said Clayton J. McDonald was notified by his supervisory officer that his work week had been changed to Monday to Friday, inclusive; assigned rest days, Saturday and Sunday, which change would become effective Sunday, May 14, 1950, and that he would be required to work on Saturday, May 13, rest on Sunday, May 14, and work the balance of the week.

Claimant Clayton J. McDonald complied with the instructions of his supervisory officer by taking only one (1) rest day, Sunday, May 14, 1950, and for the payroll week ending Thursday, May 18, 1950, he worked six

answer to this question. Obviously, he did. The assignment which he held prior to the change in connection with a seven (7) day position had a work week Tuesday through Saturday. The assignment to which he moved was in connection with a five (5) day position and had (by mandatory requirement) a work week Monday through Friday. Clearly, and definitely two separate and district assignments are involved. Therefore, he could not, by any stretch of the imagination, be considered as having remained on the original assignment, since it no longer existed, and must have moved to a new assignment. These are facts. But consider the equity of claimant's demands or rather, the lack of equity.

What did claimant do which should reward him and penalize Carrier by penalty payment? Precisely and actually, he did nothing. He worked five days in each calendar week, as required by the Guarantee Rule of the Agreement which reads:

> "Rule 11 (e)—Employes who have regular positions and are a part of the regular force and who do not lay off of their own accord will not be paid less than five days per week, except as provided in Rules 21, 26 and 27."

Consider also the language used by Petitioner in his Statement of Claim. Petitioner says, in alleging agreement violation:

> "It did not accord the said Clayton J. McDonald two (2) consecutive rest days and declined to compensate him for the sixth day worked within the payroll period ending Thursday, May 18, 1950, in accordance with the said agreement between the parties." (Emphasis supplied.)

Diligent search of Petitioner's Agreement utterly fails to reveal the slightest reference to "payroll period." Obviously, when an employe moves from one assignment to another he may not have during the actual movement two consecutive rest days. The rule applicable to this subject does not guarantee two consecutive rest days to any one under all conditions or at all times. The rules, as set forth above, is Article II, Section 1 (a) of the Forty-Hour Week Agreement and Rule 17½ (a) of the controlling Agreement. This rule merely refers to the establishment of assignments which "shall consist of five (5) days in a work week and two (2) consecutive days off." Each of the assignments held by claimant consisted of precisely five (5) days of work and two (2) consecutive rest days.

There was no violation of agreement as alleged by Petitioner and the claim should be denied.

All factual data and argument used herein has been brought to the attention of Petitioner.

OPINION OF BOARD: With the advent of the 40-hour work week, effective September 1, 1949 the Carrier bulletined the position of second trick, Engine Crew Dispatcher at Concord, New Hampshire, with a work week of Tuesday through Saturday with Sunday and Monday as rest days.

On May 12, 1950 the Claimant Clayton S. McDonald was notified that his work week had been changed from Monday through Friday with Saturday and Sunday as his rest days in compliance with Rule 17½ (b). The Claimant was required to work Saturday, May 13, 1950 thus working 6 days during the payroll week of May 12 throuh May 18, 1950.

The Claimant contends he should have time and one-half for the 6th day instead of straight time.

Rule 17 (b) and (c) provide:

> "(b) Work in excess of forty straight time hours in any work week shall be paid for at one and one-half times the basic straight

time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (g) of Rule 17½.

"(c) Employes worked on more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (g) of Rule 17½."

It is undisputed that the Claimant was not moving to or from the extra or furloughed list nor was he accumulating days off under Rule 17½ (g).

The Carrier contends Claimant was moving from one assignment to another. To this contention of the Carrier we cannot agree. The Carrier was making a change in rest days in the Claimant's regular position, and not in assignments. See Award 5807.

The Agreement is based on a work week and not on a calendar week or a payroll period week.

The Claimant was required to work 6 days in one work week. He did not have his two rest days in accordance with the Agreement and therefore was entitled to be paid at the time and one-half rate for the 6th day instead of straight time rate.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.