

Award No. 6075
Docket No. CL-6174

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

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

(1) Carrier violates the provisions of the supplemental agreement dated July 20, 1949, effective September 1, 1949, and the basic agreement, when it assigns certain employes in the New York Terminal Station Accounting Bureau, Jersey City, N. J., to work either Saturday or Sunday or to work both Saturday and Sunday and blanks their positions on one or two of the days from Monday to Friday, inclusive, and compensates said employes at pro rata rate for work performed on either Saturday or Sunday or both Saturday and Sunday, and,

(2) That the Carrier shall now compensate employes E. A. Abrams, Thomas Montrose, W. E. Lund, J. J. McDonagh, T. H. Collins, Anthony Massinino and J. F. Collins at the rate of time and one-half for all Saturdays and Sundays worked, together with pro-rata rate of pay for the days they were assigned as a rest day during the week, beginning with Monday to and including Friday when their respective positions were blanked and not filled, retroactive to September 1, 1949, and,

(3) That the Carrier shall now compensate Employees J. J. Wilson, John Scott, Charlotte Schall, F. J. McElhatten, J. J. Lenahan, J. J. Feeney, J. V. Conway and J. W. Barry, on the basis of time and one-half for each Sunday worked, together with pro-rata rate of pay for each Friday they were required to observe as their rest day and their position blanked and not filled, retroactive to September 1, 1949, and,

(4) That the Carrier shall now compensate Employees R. R. Walker, Mary R. Taylor, Howard Roselli, Anna C. Quick, A. A. Moscati, O. A. McGovern, G. H. Field and W. J. Burke at the rate of time and one-half for each Saturday worked, together with pro-rata rate of pay for each Monday they were assigned as a rest day and their position blanked and not filled, retroactive to September 1, 1949, and,

(5) That the Carrier shall compensate all other employees adversely affected until such time as the violations complained of are corrected.

EMPLOYEES' STATEMENT OF FACTS: At Jersey City, N. J., the Carrier maintains what is known as the New York Terminal Accounting Bureau, which is located at Coles and 12th Streets. Employees' Exhibit "A" is a drawing of this facility, showing the arrangement of the office, the various sub-departments and the position of each desk, with an identifying number for each employee working in the Bureau.

Employees' Exhibit "B" supplements Employees' Exhibit "A" by showing (1) the desk number, (2) name of incumbent, (3) title of position, (4) hours of assignment, (5) assigned work weeks, (6) assigned rest days, (7) whether positions are filled on rest days, prior and subsequent to September 1, 1949. It will be observed that none of the positions were filled on the seventh day prior or subsequent to September 1, 1949. Therefore, the positions were not necessary to the continuous operation of the Carrier prior to the 40 Hour Work Week and were not seven day positions subsequent thereto, as no relief was furnished on rest days. It is apparent that only six-day operation has been maintained at this location prior and subsequent to the inauguration of the 40-Hour Work Week. Notes 1 through 13 show that the duties of ten positions were absorbed on rest days by regular employees working on those days.

Prior to September 1, 1949, the employees who were required to work on Sundays were compensated at the rate of time and one-half. On September 1, 1949, the Carrier discontinued this agreed-upon practice and compensated the employees at the pro rata rate of their positions for work performed on such days.

Employees' Exhibit "B" shows that the Carrier maintained a work week of Monday through Saturday, with Sunday as rest day, in the Cashier's, P & D, and Accounting Departments at this facility prior to September 1, 1949, and subsequent thereto the employees' work weeks were reduced to five days, from Monday through Friday, with no relief being furnished on rest days of Saturday and Sunday. This is also true of some of the positions in the Eastbound and Westbound Departments. The work week assignments of such positions are proper and are not involved in the instant dispute.

The Claimants in this dispute are identified in Exhibit "B" as the incumbents assigned to positions at desks numbered 10, 12, 16, 17, 21, 23, 25, 28, 29, 66, 84, 86 and the last three positions shown on Page 4 without numbers. These are the employees who received time and one-half for work performed on Sunday prior to September 1, 1949, and were compensated thereafter at the pro rata rate.

These employees are assigned to the Eastbound and Westbound Departments. They are assigned other than Saturday and Sunday or Sunday and Monday as days of rest. Therefore, they do not have a work week assignment of Monday through Friday or Tuesday through Saturday and are compelled to work on Sundays at the pro rata rate. Due to the fact that the Carrier had never maintained positions necessary to the continuous operation of the Carrier prior to September 1, 1949, nor was it necessary to establish seven day operating positions at this location, the employees involved filed claim for the difference between the pro rata rate they received and the amount they should have received at the rate of time and one-half for all work performed on Saturday and Sunday or Sunday and Monday and an additional day's pay for each work day that they were required to suspend service for the purpose of absorbing overtime, effective September 1, 1949, and for each week thereafter. This claim was progressed up to and including the highest official designated for that purpose without a settlement being made. The Agreements now in effect between the parties are on file with this Board and by reference are made a part of this statement of fact.

OPINION OF BOARD: The Carrier and the Organization have agreements between them bearing effective dates of December 1, 1943, amended July 1, 1945; also, revised effective September 1, 1949, by Supplemental Agreement signed at Cleveland, Ohio, July 20, 1949, and Memorandum of Agreement dated May 26, 1950, and letter of agreement of May 12, 1941.

The Carrier maintains at Jersey City, N. J., the New York Terminal Accounting Bureau which is open seven (7) days a week, twenty-four (24) hours per day.

Prior to September 1, 1949, the Employees state that the fifteen positions involved in this claim were worked six days per week, one being Sunday for which Sunday service the occupant was compensated at the overtime rate under Rule 30, since the positions were not then considered seven-day positions, or necessary to the continuous operation, as the term was then expressed. With the advent of the forty hour work week, one additional rest day was added so that now these fifteen positions are assigned two consecutive rest days weekly, neither of which is Sunday, for which Sunday service the occupants are compensated at the pro rata rate. The Employees claim that, because the Carrier did not maintain seven-day positions at this facility prior to September 1, 1949, and since there is no showing by the Carrier that its requirements changed with the advent of the forty hour week September 1, 1949, these positions are still six-day positions and should be assigned as such under Rule 20-2(c) which reads as follows:

"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."

The Employees claim additional compensation as outlined in the Statement of Claim in this record.

The Carrier states that this facility handles the station accounting work for all of its New York Harbor stations and terminals located in Manhattan, Brooklyn, Long Island City, Jersey City, Croxton, West End, Hoboken, Weehawken and North Bergen. The work includes the preparation of outbound waybills, freight bills on inbound traffic and the collection of freight charges from credit order patrons of the Carrier in the New York terminal area. This facility also prepares certain reports for the use of the management on cars originating and cars interchanged with other carriers in the New York area and performs other necessary freight accounting work. This office must be open and functioning every day of the week, Sundays and holidays, twenty-four (24) hours per day.

The Carrier also states that prior to the forty hour week there were 100 positions worked at this facility. Some employees worked a straight six (6) day week, Monday to Saturday, while others worked on Sundays and were assigned a rest day other than Sunday and were paid at the overtime rate for Sunday. Effective September 1, 1949, all employees at this facility were placed on a five (5) day week with two (2) consecutive days off in each seven days. The assignments were staggered as previously to permit this facility to be operated each day of the week. Seventy-four (74) positions were assigned a Monday to Friday work week, eleven (11) positions were assigned a Tuesday to Saturday work week, fifteen (15) positions were assigned various other work weeks with two (2) consecutive rest days other than Saturday and Sunday or Sunday and Monday. The fifteen (15) employees were given a work assignment on Sunday for which they were paid straight time. No relief assignments, as such, were established. The Carrier asserts that it has the right to assign these fifteen (15) positions in this manner under Rules 20-2 Note (a) and (d) and Rule 30 (a).

The question to be determined is whether or not the duties of the positions involved in this claim could reasonably be met in six days of each week or on the other hand whether or not the nature of the work is such that employees will be needed seven (7) days each week.

The following provisions of the rules dealing with the forty hour week are material to the issues here raised:

"Rule 20—Day's Work—Overtime—Work Week.

"1. Day's Work

(a) Except as otherwise provided in these rules, eight (8) consecutive hours work, exclusive of meal period, shall constitute a day's work.

"2. Work Week

Note: The Expressions 'Positions' and 'Work' used in this rule 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.

"(a) General

The Carrier will establish, effective September 1, 1949, for all employees subject to this agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); 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. This rule is subject to the following provisions:

"(b) Five Day Positions

On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

"(c) 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.

"(d) Seven Day Positions

On positions which have been filled seven (7) days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

"(e) Regular Relief Assignments

All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of assignments in six (6) or seven (7) 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 individual agreements.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for em-

ployes of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving.

"(i) Beginning of Work Week

The term 'Work Week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes, shall mean a period of seven consecutive days starting with Monday."

"Rule 21—Absorbing Overtime

"Employes will not be required to suspend work during regular hours for the purpose of absorbing overtime."

"Rule 25—Notified or Called

"(c) Employes notified or called to perform work on their rest days and/or specified holidays shall be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes work or less, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half shall be allowed on the minute basis."

"Rule 30-(a)—Sunday Work:

"Existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change."

The evidence produced by the Carrier is sufficient to maintain its position that the nature of the work is such that employes were needed seven days each week at this facility, prior to and subsequent to September 1, 1949. The burden is upon the employes to show, in order to maintain their claim, that the duties of Claimants' positions could reasonably be met in six days. This burden has not been met. We hold, from the evidence presented in the record, that the Claimants' positions are seven-day positions as the term is specifically defined in the Forty Hour Week Agreement; therefore, positions were properly assigned by the Carrier. Consequently a denied award is required.

The Employes contend that each specific position with assigned rest days other than Saturday and Sunday should be filled on its rest days by the establishment of relief positions. After a careful study of the Forty Hour Week Agreement we cannot find any intention of the parties that, as a condition precedent to staggering work weeks as contemplated under Rule 20-2(a) General, relief positions must be established. One is not conditional on the other according to the language of the Rule, nor is there any rule or requirement under the Forty Hour Week Agreement that positions as such have to be filled every day of the week when they are seven or six-day positions. This part of the claim must also be denied.

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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.