

Award No. 6211
Docket No. CL-6230

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

CASE NO. 1

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

(a) Carrier violated the Rules of the Clerks' Agreement when it changed the rest days of Mr. J. R. Bingham's position from Sunday and Monday to Saturday and Sunday, thereby reducing his work week below five (5) days, which caused him to lose one day's pay, Saturday, September 16, 1950.

(b) That Mr. J. R. Bingham be compensated for one day at the rate of his assigned position, Cashier, Safford, Arizona, for Saturday, September 16, 1950.

CASE NO. 2

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

(a) Carrier violated the Rules of the Clerks' Agreement when it changed the rest days of Mr. Albert Jacobs' position from Saturday and Sunday to Tuesday and Wednesday, thereby reducing his work week below five (5) days, which caused him to lose two (2) days pay, Tuesday and Wednesday, September 19 and 20, 1950.

(b) That Mr. Albert Jacobs be compensated for two (2) days at the rate of his position, Industrial Clerk, Fresno, California, for Tuesday and Wednesday, September 19 and 20, 1950.

CASE NO. 3

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

(a) Carrier violated the Rules of the Clerks' Agreement when it changed the rest days of Mr. Arthur C. Wight's position from

Saturday and Sunday to Sunday and Monday, thereby reducing the work week below five (5) days which caused him to lose one (1) day's pay, February 13, 1950.

(b) That Mr. Arthur C. Wight be compensated for one (1) day at the rate of his position, Engine Crew Dispatcher, Sacramento, California, for Monday, February 13, 1950.

EMPLOYEES' STATEMENT OF FACTS: CASE NO. 1: 1. Prior to September 14, 1950, Mr. J. R. Bingham (hereinafter referred to as the Claimant) was occupying a regular Tuesday through Saturday assignment as Cashier, Safford, Arizona, with rest days of Sunday and Monday. He was notified that effective Saturday, September 16, 1950, his rest days would be changed from Sunday and Monday to Saturday and Sunday. The Claimant elected to remain on his position with the result that in his five (5) day work week commencing Tuesday, September 12, and ending Saturday, September 16, 1950, he was permitted to perform only four (4) days service, namely, Tuesday, Wednesday, Thursday and Friday, or a total of thirty-two (32) hours.

2. In a letter dated October 11, 1950, addressed to the Division Superintendent, the Division Chairman submitted claim on behalf of the Claimant for eight (8) hours compensation for Saturday, September 16, 1950, in the amount of \$13.22 per day account the Claimant's work week was reduced to four (4) days, September 12th to 15th, inclusive, thereby depriving him of the right to perform service on the fifth day, Saturday, of his work week.

3. The claim was declined by the Division Superintendent and was subsequently appealed by the General Chairman to the Chief Operating Officer designated by the Carrier to handle such disputes and again declined. The Carrier's Assistant Manager of Personnel, in his letter of declination dated March 2, 1951, took the position that there was no basis to our claim under Rule 3 or Rule 9 (a) of the current Agreement, and directed attention to a letter dated November 9, 1925, addressed by former General Chairman Lang to former Assistant to General Manager Hancock relative to the application of Rule 42 of the Clerks' Agreement.

4. On March 7, 1951, the General Chairman addressed a letter to the Assistant Manager of Personnel and advised him that his declination of the instant claim was not accepted; however, inasmuch as the basis of his declination was predicated upon former General Chairman Lang's letter of November 9, 1925, which letter, to the same extent, was involved in another claim submitted to the Third Division, National Railroad Adjustment Board, identified as Docket CL-5415, we would hold this claim in abeyance until the issue is decided by the Board.

5. On September 17, 1951, this Division decided the issue involved in Docket CL-5415 and Award 5464 was made, and by reference thereto we respectfully request that the record in Award 5464, Docket CL-5415, be included and made a part of this dispute.

6. Subsequent thereto, on various occasions, the General Chairman and Assistant Manager of Personnel discussed the application of Award 5464 to employees whose rest days are changed with the result that they were caused to suffer a loss in work week compensation under the provisions of Rules 3 and 9 of the Agreement, which factual situation is here involved; however, no conclusions were reached in connection therewith. Therefore, on January 8, 1952, the General Chairman formally requested the Assistant Manager of Personnel to give further consideration to the principles herein involved and advise if our claim would be allowed. On January 17, 1952, the Assistant Manager of Personnel addressed a letter to the General Chairman advising that his decision of declination as set forth in his letter of March 2, 1951, was affirmed, and subsequent thereto the General Chairman advised

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 3 (c) of the current Agreement between the parties, adopted to meet the requirements of the National 40-Hour Work Week Agreement, provides, insofar as is here applicable, as follows:

"Nothing herein shall be construed to permit the reduction of days for employees * * * below five (5) per week, * * *."

The sole question here presented is whether "week", as used in the above Rule, means five consecutive days, or a seven day period, beginning, in either case, on the day of the week on which the assignment is first bulletined to work.

If the Rule means five consecutive days the claims are valid, since the change of the Claimants' rest days had the effect of depriving them of five consecutive days work; but if the Rule means a seven day period the claims should be denied because the Claimants had five days work during that period, notwithstanding the change of their rest days.

Since the admitted purpose of Rule 3 (c) was to make the Agreement between the parties conform to the 40-Hour Week Agreement, the provisions of that document have a bearing on the meaning to be ascribed to the Rule.

By the terms of the 40-Hour Week Agreement the Carrier were obligated to establish, subject to certain exceptions, "a work week of 40 hours consisting of five days of eight hours each, with two consecutive days off in each seven." That Agreement further provided that, "The terms 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday." Art. II, Sec. 1, (a) and (i). The language of the quoted rules was incorporated in Sections 9 (a) and 9 (i) of the current Agreement between the parties.

It is significant that the part of Rule 3 (c) which is applicable to this case uses the word "week" and not "work week". While it may be debatable as to what days or how many days constitute a "work week", under the circumstances of the particular situation, there can hardly be any argument about the fact that a "week" is a seven-day period of time.

In the light of the language employed in Rule 3 (c) and the apparent objective sought to be accomplished by its adoption, we are of the opinion that the word "week" as used in said Rule means a period of seven days, rather than five days. This conclusion is in harmony with the prior awards of this Board. The subject was thoroughly considered in Award 5854, where the Rule involved was substantially like the one here before us and the conclusion was reached that the contention here made by the Organization, under almost identical facts, could not be sustained. This was re-affirmed in Award 5998 and we see no reason for holding otherwise.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1953.