

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Since September 1, 1949, the agreement covering Red Caps of the Chicago and North Western Railway Company has been violated by the Carrier as follows:

(1) On the above date the so-called Forty Hour Week Agreement became effective, thus reducing the work-week from six days to five days. Prior to September 1, 1949, the day of rest for all regular employees had been regularly filled by bulletin. From 1938 until 1949 all positions had been bulletined as seven day positions, with one day of relief in each seven. Carrier's refusal to bulletin both relief days under the Forty Hour Week Agreement constitutes a violation of Rule 7 of the basic Agreement.

(2) Since the employees have been denied the exercise of their seniority to assignments on the second of the relief days, Carrier is in violation of Rules 5 and 6 of the basic agreement.

(3) Rule 19 of the basic agreement requiring conference with representatives of the Organization prior to changing conditions, such as the number of employees to be assigned, etc., has not been complied with.

Claim is for all employees affected by the above conditions to be compensated for all time lost as a result thereof, and for Carrier to fill all regular positions on both relief days.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 1, 1937 Station Red Caps employed by the Chicago and North Western Railway Company were required to work seven days per week. On November 1, 1937 there became effective an agreement between the Carrier and the International Brotherhood of Red Caps (since re-named the United Transport Service Employees), Rule 12 (a) of which read as follows:

"Regularly assigned Red Caps will be assigned one regular day off in seven."

To implement this provision, all jobs were arranged to give each regularly assigned employee one regular day off in each seven, such day being

In conclusion, the carrier reiterates its position as follows:

1. Rule 11½ provides for a five day assignment for each Red Cap and all regular and regular relief men are so assigned.
2. A period of 19 months from the time the present basis of assignment was established before any complaint in connection therewith was submitted would most certainly indicate that no exception to the establishment of such practice was being taken by the organization.
3. The carrier has the right set forth in the agreement to stagger the work week of employees to best meet its need, and the volume of passenger traffic is such that a greater number of men is needed on the week-ends than is needed during the week.
4. There is no rule in the controlling agreement which provides that positions must be filled on relief days of regular employees and it is entirely the management's prerogative to fill or blank positions on such days as necessitated by service requirements.

All data in support of the railway company's position has been submitted to the duly accredited representative of the employees and is made a part of this particular dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization asserts that the Carrier here is acting in contravention of Rules 5, 6, 7, 12(a) and 19 of the effective agreements by failing and refusing to bulletin and assign both relief days created under the 40 hour week provision in the agreements. Claim is made for all time lost for all employees affected by failure of the respondent to fill all regular positions on both rest days.

Prior to November 1, 1937, all Red Caps worked a 7-day week, however, on that date (the effective date of the initial agreement) the Carrier under Rule 12(a) established a regular rest day each week for each regularly assigned position. At this time regularly assigned relief positions (also with one rest day) were established and filled.

On May 1, 1940 Rule 19 was added by amendment, said rule providing for conferences between the parties prior to change of working conditions of established positions. On September 1, 1949, a 40-hour week amendment to the agreement was entered into. Under this agreement a 40-hour, 5-day week was established with two rest days for each position.

It is the failure of the Respondent to fill all of the positions on the second rest day which the Organization contends is contrary to Rule 19 and the Carrier's obligation to extend the previous practice of filling positions under the 40-hour Agreement.

On the basis of the record and the rules relied upon by the Organization it is self evident that the Carrier here has no obligation to use a specified number of employees on any specific number of days, nor is there any provision requiring the filling of all positions on all rest days of such positions.

The Respondents practice of filling one rest day of each position each week, prior to September 1, 1949, was in no way affected, nor is it now required to extend the practice to the extent of filling all rest days of all positions under the modified 40-hour week provision inserted in the agreement on that date.

The provision providing for a 40-hour, 5 day week in this agreement is not the so-called National 40-Hour Agreement of March 1949 and neither

the Opinion nor the Findings in this docket should be construed or interpreted as applying thereto.

Neither Rule 12(a) which provides that regularly assigned Red Caps will be granted one day off in seven, nor the practice of establishing assigned relief positions to fill the one rest day of the regular position can properly sustain the claim here.

The parties under their 40-hour week clause specifically provided that the work week might be staggered in accordance with the Carrier's operational requirements in order to provide a work week of 40 hours consisting of five days of eight hours each. Certainly there is nothing in this rule requiring both rest days of each position to be filled at all times. There is nothing in the rule which prohibits the blanking of the second rest day of the regularly assigned positions when operational requirements of the Carrier permit.

In the absence of a specific rule to the contrary, a carrier may exercise its fundamental right to schedule work and make working assignments.

That is what Respondent has done here. We are without authority to compel it to extend its existing practice to the second rest day.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.