

Award No. 6384

Docket No. CL-6326

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

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

(a) Carrier violated the rules of the Clerks' Agreement at Mormon Yard, Stockton, California, when it assigned the occupant of Position No. 715, Assistant Car Clerk, Monday and Tuesday as rest days; and,

(b) Carrier shall assign Saturday and Sunday as the regular assigned rest days of Position No. 715; and,

(c) The occupant of Position No. 715 shall be compensated at the rate of time and one-half for each Saturday and Sunday he was required to work from October 4, 1949, until such violation of Agreement is corrected.

EMPLOYEES' STATEMENT OF FACTS: Under date of October 4, 1949, Carrier's Superintendent R. D. Shelton, Fresno, California, issued his bulletin No. 76 establishing new position No. 715, titled Assistant Car Clerk, Mormon Yard, Stockton, California, hours 4:00 A.M. to 12:00 noon, seven days per week, rest days Monday and Tuesday. Mr. V. C. McKee, with a seniority date of November 22, 1936, was the successful applicant for the position and was assigned thereto.

Concurrently with the establishment of new Assistant Car Clerk Position No. 715 at Mormon Yard, Stockton, California, Carrier began to utilize the services of Mrs. N. D. Salzgeber, an off-in-force-reduction employe with seniority date of December 18, 1944, to provide relief for Mr. McKee each Monday and Tuesday, the assigned rest days established for Position No. 715. The Employes registered an immediate protest with Carrier officials pointing out to them that inasmuch as the off-in-force-reduction employe being used to relieve Mr. McKee on his rest day (Mrs. Salzgeber) was available for service any day of the week, it was incumbent upon the Carrier to assign rest days of Saturday and Sunday to Position No. 715.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The essential question presented in this Claim is whether the Carrier violated the rules of the Clerks' Agreement by assigning Monday and Tuesday as rest days for this position instead of Saturday and Sunday."

Article VI, Section 10-d is controlling. It provides that "any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

Clearly, this is not a requirement that the two consecutive rest days must be on Saturday and Sunday. If the Parties had intended a mandatory provision they would not have used the all inclusive term "any", nor the permissive expression "may". The use of the word "presumption" does, however, show that the Parties regarded Saturday and Sunday to be the proper rest days unless some other condition existed. The understanding as to what this condition could be is found in the December 17, 1948 Report to the President by the Emergency Board No. 66 in National Mediation Case A-2953, which reads in part:

"Consistent with their operational requirements, the Carriers should allow the employees two consecutive days off in seven and so far as practicable these days should be Saturdays and Sundays."
(Emphasis supplied).

Because of the "presumption in favor of Saturday and Sunday" set forth in Article VI, Section 10-d, the Carrier has the burden of showing that it was not "practicable" to have Saturday and Sunday as rest days for this position. This Board cannot find that the terms "practicable" and "possible" are synonymous. There are many situations where what is "possible" is not "practicable".

Management, except through restrictions contained in this Agreement, has the right and duty to arrange its work efficiently. The Board must find in this case that the Carrier did show by a preponderance of the evidence that it was not "practicable" to have Saturday and Sunday as rest days. The following assertions of the carrier were not controverted:

"In addition to being a port through which considerable import and export business is handled, Stockton-Mormon is one of the Carrier's heaviest interchange points. Much of the interchange of traffic with the Southern Pacific and Western Pacific consists of perishable fruits and vegetables which, in addition to requiring prompt movement, also necessitates the attention of experienced employees to assure correct reporting and handling of all matters pertaining to the cars received and handled, to and from connecting lines. The duties of Position 715 included, among other things, the important duties of handling reports and other matters pertaining to the interchange of cars and thus necessitated the services of an employee who was experienced in the duties thereof, particularly on Saturdays and Sundays, which were the heaviest days of the week insofar as concerned Position 715. Since the so-called car desk, occupied by the incumbent of Position 715 was being protected on the first and third tricks on Saturdays and Sundays with somewhat inexperienced assigned rest day relief employees, it was also highly desirable, from the standpoint of efficiency to have an experienced employee on the car desk during at least a portion of those days. Since Mondays and Tuesdays were the lightest days of the week, insofar as concerned the duties of Position 715, those days were assigned as the rest days or days off for

the regular incumbent of Position 715, in the hope that the then available off-in-force-reduction employes, who were female employes, would be able to satisfactorily handle the duties and responsibilities attaching to Position 715 on Mondays and Tuesdays."

The evidence further is that four (4) different off-in-force-reduction employes protected the rest days during the period of the Claim and, therefore, the opportunity for any one of these employes to attain the required experience to handle the work under the conditions herein set forth was materially lessened.

The Board finds that the Carrier, on the basis of the evidence, was not required to assign Saturday and Sunday as the regular assigned rest days for this position. No showing was made that the Claimant was required to suspend work in order to absorb overtime.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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

That the agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1953.