

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GRAYSONIA, NASHVILLE & ASHDOWN RAILROAD COMPANY

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

(1) Work assignments that contemplate rest days other than Saturdays and Sundays or Sundays and Mondays are not to the best interest of the track employees and are in violation of the effective Agreement;

(2) The Carrier now be required to compensate the employees holding seniority as section laborers for eight (8) hours each at straight-time rates of pay for each day they were deprived of working their former work assignments and for the difference between the straight-time rate and the time and one-half rates of pay for services rendered on the rest days of their former assignments since January 4, 1954, when the work assignments referred to in Part (1) of this claim were placed into effect.

EMPLOYEES' STATEMENT OF FACTS: Prior to the effective date of the Agreement here in question, the working conditions, rates of pay, etc., of the track forces employed on this Carrier's property were not subject to or controlled by any collective bargaining Agreement and work assignments were therefore properly assignable and assigned entirely by and at the Carrier's sole discretion and pleasure.

Following the National Mediation Board's certification of the instant organization as the duly authorized and designated representative of the Carrier's track forces as provided in the National Railway Labor Act as amended, the instant Agreement was negotiated and the working conditions, rates of pay, etc., of the Carrier's forces were thereafter subject to and controlled thereby.

In the course of the negotiations of this Agreement, were advised by the Carrier that its track forces had been assigned to work six days per week, Mondays through Saturdays, primarily to provide full protection for the Carrier's operations which were and are limited to a six-day operation, namely Mondays through Saturdays. The Carrier tentatively agreed to a forty-hour work week for its track forces provided it would be permitted to place work assignments in effect which would permit the Carrier's operations to be protected on Mondays through Saturdays by its track forces.

off or rest days of the various employees was made under the rights of this company,

to manage and direct its operation and working forces
to have complete track coverage at all times
to establish jobs with different off or rest day.

As there were no extenuating circumstances to take into consideration choice of the jobs on each section was given to laborers on those sections by right of seniority.

It is the contention of the Graysonia, Nashville and Ashdown Railroad Company that the change made January 4, 1954 was made in accordance with all terms and provisions of the agreement, and that there has been no contractual violation by the Graysonia, Nashville and Ashdown Railroad Company. Upon the basis of facts contained in this submission, the Graysonia, Nashville and Ashdown Railroad Company respectfully requests the National Railroad Adjustment Board to find the ex parte submission made by the Brotherhood of Maintenance of Way Employees to be without merit.

OPINION OF BOARD: In negotiating their current agreement, the parties recognized the Carrier's primary problem of having track coverage for six days per week while giving the employees a 40-hour, five day work week. At first the section laborers were given five consecutive work days each with two consecutive days off. To maintain the proper track coverage for six days, approximately one half of the crew was assigned to work Monday through Friday, with Saturday and Sunday as rest days, and the remaining employees were assigned to work Tuesday through Saturday, with Sunday and Monday as rest days. This continued for approximately fourteen months, until January 4, 1954, when the Carrier decided that, because of excessive absenteeism, a different assignment would be necessary to keep an adequate crew for each of the six days, Monday through Saturday.

New schedules were announced by the Carrier, effective January 4, 1954, whereby certain employees were required to take two rest days which were not consecutive. That is, all were required to take Sunday as one rest day, but certain employees were expected to take Tuesday, Wednesday, Thursday or Friday, instead of Saturday or Monday, as previously scheduled. The instant grievance followed, with the Brotherhood citing Article X, and claiming a violation thereof.

"Article X—General

Section 1. The Company's right to maintain complete track coverage at all times shall not be abrogated. **Work assignments will be made to the best interest of track employees, and where practicable, seniority will govern.**" (Emphasis added.)

The issue before us involves the question as to whether Article X is to be interpreted as requiring the Carrier to accept the employee's decision as to what is to his "best interest" in the matter of work assignments; or whether the management still retains the primary responsibility for making work assignments, while giving consideration to the employees' best interest.

Claimants have taken the language of the second sentence of Article X out of context. Standing alone this language would appear to support the claim now before us. But to be properly understood and applied this sentence must be taken within and not out of its context. We think that the first sentence of Article X is the controlling one. The first requisite of that Article is the Company's right to maintain track coverage. If each employee can elect what he considers to be to his best interest in the matter of work assignments, the Company's right to maintain track coverage no longer exists. We cannot, therefore, conclude that the employees have the exclusive right to interpret and apply this language.

Article II of the parties' Agreement specifically provides that "The management of the operation and the direction of the working forces . . . is vested in the Company." Even though we have no wish to become highly legalistic in this matter, we think that the general provision of Article X must be applied in conjunction with this more specific reservation of management's prerogatives. Taking all of the language of Article X, plus the plain meaning of Article II, we cannot conclude that the employees have the exclusive right to determine what assignments they should have.

We sympathize with the employees' wish to have two consecutive rest days. Wherever practicable for the operation of the Carrier's business, work weeks with two consecutive rest days are desirable. And such may be generally considered to be to the best interest of the employees. But the management has primary responsibility for making work assignments and it must consider what is best for the efficient operation of its business. The language of the parties' present Agreement does not specifically require that assignments be made with five consecutive work days following by two consecutive rest days. And since it does not we cannot sustain this claim.

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 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1956.