

Award No. 7324

Docket No. TE-7115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York Central Railroad (Buffalo and East) that:

(1) Carrier violated the Agreement between the parties when in changing the assigned rest days of U. DeSpretter, regular assigned incumbent second shift position at SS-SK, Sedgwick Avenue, New York, it suspended him from work on December 17 and 18, 1952.

(2) Carrier shall now compensate U. DeSpretter for two additional days at the straight time rate.

EMPLOYEES' STATEMENT OF FACTS: There is now, and was at all times hereinafter mentioned, in full force and effect, a collective bargaining agreement between The Order of Railroad Telegraphers, hereinafter called Employees, and The New York Central Railroad Company (Buffalo and East), hereinafter called Company. The Agreement was effective July 1, 1948, and has been amended from time to time. Copies of the Agreement and amendments are on file with this Board and are, by reference, included in this Submission the same as though set out herein word for word.

The dispute involves interpretation of the Agreement and was handled on the property as prescribed by the Railway Labor Act, as amended, and in accordance with the usual handling of grievances on this Carrier. The claim was denied by Carrier and is now properly submitted to the Third Division, National Railroad Adjustment Board for decision.

The claimant, U. DeSpretter, was at all times hereinafter set out, an employe of Company, holding a regular assignment, as provided in the seniority rules of the Agreement, as second shift telephoner-leverman at SS-SK, Sedgwick Avenue, New York, with assigned hours of 3:30 P.M. to 11:30 P.M., (a seven day position.)

Prior to December 17, 1952, claimant had an assigned work-week as follows:

Wednesday, Thursday, Friday, Saturday and Sunday	work days
Monday and Tuesday	rest days

Award No. 5854— October (1949)	2 Sunday	R	Award No. 5998— May (1950)	12 Friday	R
	3 Monday	R		13 Saturday	R
	4 Tuesday	W		*14 Sunday	R
	5 Wednesday	W			
	*6 Thursday	R			
	7 Friday	R			
Award No. 6211— (Case No. 1) Sept. (1950)	10 Sunday	R	Award No. 6211— Sept. (1950) (Case No. 2)	16 Saturday	R
	11 Monday	R		17 Sunday	W
	12 Tuesday	W		*18 Monday	R
	13 Wednesday	W		19 Tuesday	R
	14 Thursday	W		20 Wednesday	R
	15 Friday	W	Award No. 6211— (Case No. 3) Feb. (1950)	11 Saturday	R
	*16 Saturday	R		*12 Sunday	R
	17 Sunday	R		13 Monday	R
Award No. 6281— March (1951)	10 Saturday	R	16 Friday	W	
	11 Sunday	R	*17 Saturday	W	
	12 Monday	W	18 Sunday	W	
	13 Tuesday	W	19 Monday	W	
	14 Wednesday	W	20 Tuesday	R	
	15 Thursday	W	21 Wednesday	R	
Award No. 6282— March (1951)	12 Monday	R	18 Sunday	W	
	13 Tuesday	R	19 Monday	W	
	14 Wednesday	W	20 Tuesday	W	
	15 Thursday	W	21 Wednesday	W	
	16 Friday	W	22 Thursday	R	
	*17 Saturday	W	23 Friday	R	

* Effective date of change.

For comparative purposes (note particularly Award No. 5998 and Award No. 6211—Case No. 3) we show below the same information in the instant case of claimant DeSpretter:

December 1952	15 R
	16 R
	17 R (Effective date of change)
	18 R

Carrier holds it is clearly evident that the above cited awards support its position in the instant case.

CONCLUSION

Carrier submits that the facts hereinbefore placed in evidence clearly demonstrate that the claim of the Employees is devoid of any merit and the claim should, therefore, be denied.

No facts or arguments have been herein presented that have not been made known to the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: The facts in this case are simple and undisputed. Claimant DeSpretter is the regularly assigned occupant of the second shift telephoner-leverman position at Signal Station "SK", Sedgwick Avenue, New York, a seven-day position. Prior to the events which led to this dispute the Claimant had an assigned work week of Wednesday through Sunday, with Monday and Tuesday as his assigned rest days. Thus, he worked Wednesday, Thursday, Friday, Saturday and Sunday. Originally the rest day work of this position was performed by extra employees. But on Dec-

ember 19, 1952, by bulletin (Notice T-321) the Carrier established a regular relief position to perform rest day work at two locations and included two days, Wednesday and Thursday, on the second shift position at Signal Station "SK".

On December 12, 1952, the Carrier notified Claimant DeSpretter that:

"Effective December 17th 1952 your regular relief days will be Wednesday and Thursday."

Claimant worked his regular assignment during the week which began on Wednesday, December 10. That is, he worked December 10 to 14, inclusive, and was relieved on his usual rest days, Monday and Tuesday, December 15, and 16. On Friday, December 19, he started his new schedule and worked December 19 to December 23, inclusive, and then had his rest days Wednesday and Thursday, December 24, and 25. Since he was not permitted to work on December 17, and 18 (following his two rest days of the old schedule, December 15, and 16), he is now filing this claim for lost time on December 17, and 18.

The issue before us involves the question as to whether in such a change, the new work week properly begins on an employee's rest day or whether the work week begins with the employee's first work day of the new work week.

Article 11, Section 1, paragraphs (a) and (i) provide that,

"(a)—General—The carrier will establish for all employees, subject to the exceptions contained in this article and in Article 39, a work week of 40 hours, consisting of 5 days of 8 hours each, with 2 consecutive days off in each seven; 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 . . ."

"(i)—Beginning of Work Week—The term '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 7 consecutive days starting with Monday." (Emphasis ours).

According to paragraph (k) of the same article, the Carrier reserves the right to change rest days by giving not less than 72 hours' written notice. Timely notice was given in the instant case and is not an issue.

The real question before us is whether the two days, December 17 and 18, were part of Claimant's old work week or part of his new work week. While the Carrier gave notice that the change was to be effective December 17, 1952, the question before us can be simply stated as follows: May the Carrier, under the provisions of the Agreement, start a work week with two rest days? We think this question is clearly answered in Article 11, Section 1, (i) which states specifically that "The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work." (Emphasis ours).

According to this the Claimant's new work week did not begin until Friday, December 19, his first work day of the new work week. This means, of course, that December 17, and 18, remained a part of his old work week and he was entitled to work on those days.

Article 12 of the parties' Agreement also provides that,

"A regularly assigned employee will receive one day's pay within each 24-hour period according to location occupied or to which entitled, if ready for service and not used . . ." (Emphasis ours).

The only exceptions to this are the employee's rest days, holidays, and in cases of reduction of work force, or emergencies "beyond the control of the company."

Since, under the terms of this Agreement, the rest days of a work week follow the five work days, and do not precede them, we see no alternative but to sustain this claim. Under the guarantee rule, a regular employee cannot properly be left with a void of two days in any work week. And in refusing to avail itself of the service which Claimant DeSpretter was ready to perform on December 17, and 18, 1952, the Carrier must pay for the two lost days at the pro rata rate.

FINDINGS: The Third Division of the Adjustment Board, upon the 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May, 1956.

DISSENT TO AWARD NO. 7324. DOCKET NO. TE-7115.

The majority Opinion sustaining the claim in this dispute is founded on an erroneous interpretation of Article 11, Section 1, paragraphs (a) and (i), and Article 12 of the controlling Agreement in holding that:

"Since, under the terms of this Agreement, the rest days of a work week follow the five work days, and do not precede them, we see no alternative but to sustain this claim. Under the guarantee rule, a regular employee cannot properly be left with a void of two days in any work week. And in refusing to avail itself of the service which Claimant DeSpretter was ready to perform on December 17, and 18, 1952, the Carrier must pay for the two lost days at the pro rata rate."

Prior to December 17, 1952, Claimant was the regular occupant of position of second shift Telephoner-Leverman at Signal Station "SK", a seven-day position. The position had an assigned work week of Wednesday through Sunday, with Monday and Tuesday as rest days. Claimant worked Wednesday through Sunday, December 10 through 14, and observed Monday and Tuesday, December 15 and 16, as rest days—thus completing the old work week.

Originally the rest day work was performed by extra employees. Effective December 19, 1952, as a result of Bulletin T-321, a regular relief position was established to work at two different locations and included work on Wednesday and Thursday on the position herein involved.

Claimant was given the required notice, as stipulated by the Agreement, that:

"Effective December 17th 1952 your regular relief days will be Wednesday and Thursday."

From December 10, 1952 (the first work day of the old assignment), up to and including the last work day of the assignment under the newly assigned work week, i.e., December 30, 1952, we find the assignment was filled as follows: Wednesday through Sunday, December 10 through 14, by Claimant; Monday and Tuesday, December 15 and 16 (rest days), by an extra employee. Thus ended the old work week. New work week: On Wednesday and Thursday, December 17 and 18 (rest days), the position was filled by an extra employee; Friday through Tuesday, December 19 through 23, by Claimant; Wednesday and Thursday, December 24 and 25, by a regularly assigned relief employee; Friday through Tuesday, December 26 through 30, by Claimant. Thus we find in the 21-day period comprising two differently assigned work weeks, Claimant filled the position 15 days; 4 rest days were filled by an extra employee, and two days by a regularly assigned relief employee—total, 21 days.

No individual, as such, has any work week or work days or rest days assigned to him. Work weeks, work days, rest days, etc., are assigned to a job. The individual who occupies that assignment or job is entitled to its characteristics: work week, rest days, hours, pay, etc.

When an assignment is bulletined (or changed by proper notice), the work days and rest days are specified; together they make up the work week. An individual who bids in that job or occupies it under other proper circumstances, may step into or occupy that assignment at any time, depending upon the circumstances. For instance, if he were awarded a bulletined assignment having a work week starting on Monday, he might occupy the job on Wednesday for the first time. He would thus work Wednesday, Thursday and Friday, and have Saturday and Sunday off. The majority Opinion, if it followed the reasoning employed in this case, would hold that there was a violation in the hypothetical case just put because he would not work five days before taking his rest days. The majority Opinion has confused the definition of work week with the fact that an individual may enter upon the work week on any one of the seven days comprising it; he is not limited to beginning work on it on the day which marks the beginning of the work week, as the Opinion holds here. The work week of an assignment exists independently of the individual who may be occupying it at any particular time. If one occupant leaves an assignment and another enters upon it and does so on a rest day, this does not mean that the Carrier has turned the work week around or changed it in any way. A work week is not changed to a different one depending upon which of the seven days an occupant may step into it, as the majority Opinion assumes in this case.

Situations identical upon the facts with the one here have been before this Board in three previous Awards, by three different Referees. In each instance the Board has denied the claims (Awards 5854, 5998, 6211). The majority Opinion has chosen to ignore them. Because of the far-reaching and erroneous basis upon which this Award is placed, we dissent.

The dissent to Award 7319 is also applicable to and made a part of this dissent.

/s/ C. P. Dugan
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp
/s/ J. F. Mullen