Award No. 7769
Docket No. TE-7184

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad (Eastern and Western Divisions) that the Carrier violated the provisions of the agreement between the parties when:

1. It established a work-week Tuesday through Saturday for R. T. Vermillion, regular assigned second trick operator at Dwight, Illinois, with assigned rest days of Sunday and Monday.

2. That beginning with the first day of the violation, Monday, September 19, 1949, and continuing until corrected, Claimant R. T. Vermillion be compensated—

(a) Eight (8) hours at the pro rata rate for each Monday, except such day be a holiday the compensation shall be at the time and one-half rate.

(b) The difference between the straight time rate paid and the time and one-half rate for each Saturday.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated June 16, 1944, and supplement thereto dated September 1, 1949.

Effective September 14, 1949, two positions at Dwight were assigned as follows:

POSITION	ASSIGNED HOURS	ASSIGNED DAYS
First Operator	6:00 A. M.—2:00 P. M.	Monday through Friday
Second Operator	5:30 P. M.—1:30 P. M.	Tuesday through Saturday

The position of second operator was filled by R. T. Vermillion who contended that the assignment was improper and not in conformity with the rules of the agreement. Claim was filed for one day's pay covering Monday of each week and claim was also made for the difference in pay between the pro rata rate and time and one-half rate for work performed on Saturday of each week.

by the Employes. Therefore, we wish to reserve the right to make further answers as are deemed necessary.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are stated very briefly in the record and are not in dispute. Apparently, there were two positions of Operator-Clerk at Dwight, Illinois both before and after the Forty-Hour Week Agreement became effective. There is no description of the assignments or duties of these positions prior to the effective date of the forty-hour week; after that date, in September of 1949, the assignments of these two positions were established as follows: first shift, 6:00 A. M. to 2:00 P. M., Monday to Friday, rest days Saturday and Sunday; second shift, 5:30 P. M. to 1:30 A. M., Tuesday to Saturday, rest days Sunday and Monday. An operator-clerk was required to be on duty on Saturday because of a train which operated from Dwight to Washington, Illinois three times a week, returning to Dwight on Tuesday, Thursday and Saturday. On May 29, 1951, operational requirements changed, and operators at that time were assigned on a continuous basis of three eight-hour shifts each 24 hours.

The claim is that the second shift position at Dwight was a five day position and was required under the Agreement to have assigned work days of Monday to Friday and assigned rest days of Saturday and Sunday. Therefore, for the period from September 19, 1949 until May 29, 1951, compensation is claimed on behalf of that operator for eight hours at the pro rata rate for each Monday, and for the difference between straight time and time and one-half for each Saturday. The rules involved are the standard forty-hour week rules, particularly the following:

"Rule 17. Section 1.

"(b) **Five-Day Positions.**

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

"(c) **Six-Day Positions.**

Where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

"(f) **Deviation from Monday-Friday Week.**

If in positions or work extending over a period of five days per week, an operational problem arises which the Carrier contends cannot be met under the provisions of Rule 17, Section 1, paragraph (b), above, and requires that some of such employes work Tuesday to Saturday instead of Monday to Friday, and the employes contend the contrary, and if the parties fail to agree thereon, then if the Carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under this agreement."

Claimant contends that the duties of each of the operator positions at Dwight can reasonably be met in five days, pointing to the undisputed fact that on each position five days are worked in each seven and no work is performed on the two rest days; that is, no one is assigned to fill either of the positions on the rest days thereof. Since all of the duties of the second shift position, which is the subject of this claim, can be and are met in five days, Claimant contends that under Rule 17 1(b) the rest days are required to be Saturday and Sunday, not Sunday and Monday as Carrier has assigned them.

Carrier contends that since operator-clerk work is required to be performed at Dwight on six days each week, each of the two positions there

is a six-day position and its rest days may be either Saturday and Sunday or Sunday and Monday under Rule 17, 1(c).

Thus, the issue in dispute is whether the second shift operator position at Dwight is a five-day position or a six-day position under Rule 17. The answer to this seemingly simple question is complicated to an extreme degree by the divergence of opinion between the parties to this dispute and similar divergence in awards of this Division as to the meaning of the Note to Rule 17, which reads as follows:

> "The expressions 'positions' and 'work' used in this Agreement refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes."

Essentially, Carrier contends that whenever work at a railroad station or other subdivision is required to be performed by employes of the same class or craft and on the same seniority roster, over a period of six days, all of the employes engaged in performing this work have six day positions, and consequently their rest days may be either Saturday and Sunday or Sunday and Monday, whichever are best adapted to the efficient and economical performance of Carrier's work.

It would appear that there are three possible meanings for the phrase "six-day position": 1. A position on which the regularly assigned employe himself actually works six days each week; 2. A position, the work specifically attached to which is necessary to be performed on six days each week, regardless of which employe or employes actually perform that work; 3. A position which is physically located at a Carrier operation where work of a nature similar to that attached to the position is required to be done on six days each week, regardless of whether the work regularly attached to the position in question is required to be done on each of the six days.

Meaning No. 1 can be summarily rejected—since the installation of the forty-hour week, all work assignments are for five days a week. The second meaning appears to be the plain meaning of the words of the phrase, without considering other provisions of the Agreement or attempting to interpret the language by resort to material outside the Agreement, and it is the one argued for by Claimant in this case. "Position" in the railroad industry and elsewhere generally means a specific assignment of work, not a specific employe or an entire operation. Meaning No. 3 derives from the definition of "position" in the "Note" to the Forty-Hour Week Agreement, cited above, and it appears to have been adopted in a number of awards. Carrier cites many awards in support of its position, of which Award 6232 on this Division seems to involve the situation most analogous to this case. In that Award, Claimant was assigned a work week with rest days other than Saturday and Sunday or Sunday and Monday. Relief was provided on one of his rest days but no work on his position was performed on the second of his rest days by anyone. It was his contention that the service and operations of his position were required to be performed only six days each week and that the position was therefore a six-day position. Carrier contended that his assignment was a seven-day position for the reason that the operations at the terminal to which he was assigned were necessary to be performed seven days a week. The award said, in part:

> "It is not sufficient that Carrier's operations are performed seven days a week. It must appear that the operations in which Claimant is engaged are necessary to be performed seven days a week, . . ."

and went on to find that freight handling work, similar to the work Claimant did, was required at the terminal seven days per week. In response to the argument that Claimant's position was not a seven-day position for the reason that the duties of that particular position were only performed on six days, the award stated:

"We cannot agree with such interpretation. In Claimant's case, the nature of the work is not such that employes will be needed only six days each week, but apparently the amount of the work is such that Carrier finds it unnecessary to relieve both rest days of every employe, although the service, duties and operations which Claimant performs are necessary to be performed seven days each week."

Carrier leans heavily on Awards 6602 and 6946, which it asserts to be identical with those in the instant case. In each of these two awards, as in the instant case, there were two telegraphers assigned to the station involved. In Award 6602, the force consisted of an agent and a clerk-telegrapher, both working the first trick, 6:00 A. M. to 2:00 P. M. The agent was assigned to work Monday through Friday, rest days Saturday and Sunday, and his position is described as a five day position. The clerk-telegrapher was assigned to work Wednesday through Sunday, rest days Monday and Tuesday, and his position is described as a seven day position. On Monday and Tuesday the agent was required, in addition to his own duties, to perform the duties of the clerk-telegrapher. The claim was that the Agreement was violated by combining the work of the agent and the clerk-telegrapher on Monday and Tuesday instead of assigning a relief employe to do this work. Carrier's position was that it had the right to "stagger" the assignments to accomplish the necessary work, without assigning relief employes. The claim was denied.

In Award 6946, the force consisted of an agent-telegrapher, assigned to work 8:00 A. M. to 5:00 P. M., Monday through Friday, Saturday and Sunday rest days; and a telegrapher-ticket clerk, assigned to work 9:00 A. M. to 6:00 P. M., Tuesdays through Saturdays, Sunday and Monday rest days. On Monday, the agent-telegrapher performed the work of the telegrapher-ticket clerk position in addition to his own; on Saturdays the telegrapher-ticket clerk performed the necessary duties of the agent-telegrapher position. The claim here, as in Award No. 6602, was that the combining of the duties of the two positions was a violation of the Agreement. In a long and comprehensive opinion dealing extensively with the aims and purposes of the Forty-Hour Week Agreement, the Board upheld the right of the Carrier to stagger the assignments and combine them as was done in that case, and denied the claim.

It is immediately apparent that there are significant differences between these awards and the case at hand. In each of the two awards cited, there is no dispute that one of the two positions involved is a six or seven-day position; indeed, the very violation complained of is the performace of the work of that position on the sixth or seventh day by someone other than a relief employe.

In Award 6184, also relied upon by Carrier, it appears that the claim originally presented on the property was based on the contention that Claimants occupied five-day positions and therefore should have been assigned rest days of Saturday and Sunday, just as in the instant claim. However the claim presented to the Board was on the basis that the positions involved were seven-day positions, and the violation complained of was Carrier's practice of staggering the work assignments so as to have regular employes do the work of the two positions involved on their rest days. This Award, therefore, is similar to those in 6602 and 6946 and involves a different factual situation than the one before us.

Thus it can be seen that these latter three awards are consonant with the second interpretation of the phase "six-day week" set forth above, since in each of these cases work specifically attached to the position in question was assigned to be done on the sixth or seventh day and was actually done by some other employe.

We have found no other cases on this Division in which the factual situation involved only two employes at a station, each of whom was

assigned to an entirely different shift, and neither of whom did any work of the other position on his rest day; and where no work attached to either specific position was done on the sixth or seventh day. It is true that Award No. 6232 involves essentially the same question, but in that case it is obvious that a busy terminal with many employes of the same class was involved and, although the facts are not specific, it is likely that work similar to the work performed by the Claimant therein was done on the seventh day during the same hours his own position regularly worked, and could just as easily have been done by a relief employe assigned to his position as to another position during the same shift. In view of these differing circumstances, we do not think the same basis exists for interpreting the position in this case as a six-day position, as existed for holding the position in Award 6232 to be seven-day position.

Award 1565 of the Second Division is factually the closest case to the instant one to which we have been referred. That award, citing and relying on Second Division Award 1528, held that a position of engine carpenter, the only one on the shift, was a 7-day position and could be assigned a work week of Wednesday to Sunday, rest days Monday and Tuesday, even though no work of the position was done by anyone on the two rest days. However, in these two awards, as in most of those cited to us, there was an element present and considered by the Board which is absent in the case before us—the fact that prior to the advent of the 40-hour week, the position had been filled 7 days a week.

After careful consideration of the rules, the prior Awards and the facts in this record, we are convinced that the position here is a five-day position. In so holding, we are not unmindful of the background of the Forty-Hour Week Agreement and the clear expressions of intent to preserve the Carrier's flexibility of operations in applying it. Nor are we unmindful of the decisions of this Board relating to the staggering of work weeks; we do not disagree with them and have discussed and distinguished those cited by Carrier as being most nearly analogous to this case. We think, however, as was said in Award 6001, also cited by Carrier, that

> "although the arguments before and the findings by the Emergency Board on the Forty-Hour Week dispute and the subsequent Board of Arbitration are significant in judging the intent and meaning of the relevant portions of the Parties' agreement in respect to the instant case, our main concern must be to give a fair and reasonable construction of these portions as they are written; the language of the Agreement is of paramount importance."

We think our interpretation of the phrase "six-day position" as it applies to the facts before us is the fairest and most reasonable construction of the language of the rule. Such an interpretation is not at odds with the remainder of Section 17 but is in harmony with it. Section 17, 1(f) provides for just such a situation as is present in this case—where for operational reasons, a five-day position cannot be assigned to work Monday through Friday with rest days on Saturday and Sunday. It provides that a difference of opinion between Carrier and its employes as to whether the operational requirements actually require rest days other than Saturday and Sunday may be submitted as a grievance and may be handled to this Board for a factual determination, thus allowing Carrier the intended flexibility where it is warranted by operational requirements. In this case, neither side applied paragraph 1(f). The Carrier contended that this was a six-day position. Claimant apparently contended that since this was a five-day position, it was necessary that Carrier get the work done on Saturday by means of a relief employe or overtime payments, ignoring paragraph 1(f).

It was urged in argument by the Petitioner that Decision No. 7 of the Forty-Hour Week Committee requires that under Section 1(f), the operational problem and the necessary number of Tuesday to Saturday assignments to meet it must be explained to the duly accredited representative of the

employes and an effort made to reach agreement; and that since the record does not show that this was done, Carrier had no right to establish a Tuesday to Saturday assignment on a five-day position and the claim should be sustained on this basis.

We cannot agree that such a literal application of Decision No. 7, which is a "guide" to interpretation of paragraph 1(f), is required in this case. It appears to us that of necessity the operational problem involved—namely the Saturday train from Washington—was known to the representative of the employes, if not before the assignment was made, certainly immediately thereafter. The employes had the right to file their grievance or claim on the basis that the operational requirement was not a valid one, and should have done so. There is nothing in the record in this case, submitted by employes, to indicate that the operational requirement asserted by Carrier as the reason for establishing a Tuesday through Saturday five-day assignment is not a valid and legitimate one. From the facts available to us, it appears that it is valid and legitimate, and for this reason the claim cannot be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 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 1st day of March, 1957.