

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. Carrier violated agreement between the parties, when in changing the assigned rest days of Harold H. Fink, second shift operator, Grand Rapids, Michigan, it permitted him to work only three days in his work week beginning June 18, 1955.
2. Carrier shall compensate Harold H. Fink for two additional days (8 hours each), at straight time rate of his position (16 hours at \$1.877 per hour).

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Grand Trunk Western Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective July 6, 1951 and has been amended. The Agreement, as amended, is on file with this Division and is, by reference, included herein as though set out word for word.

This dispute was handled in the usual manner on the property through the highest officer designated by Management to handle disputes between Telegraphers and Carrier arising out of interpretation of the collective bargaining Agreement hereinabove mentioned. Under the provisions of the Railway Labor Act, as amended, this Division has jurisdiction of the parties and the subject matter.

Harold H. Fink is an Employee covered by the Telegraphers' Agreement and owns in accordance with the seniority rules of the Agreement, an assignment at Grand Rapids, Michigan, designated as second shift operator clerk. The assigned hours of the position are 4:00 P. M. to Midnight. On the dates involved herein, the rate of pay was \$1.877. The position is a seven day position in that it is filled seven days per week, Mr. Fink being assigned a work

subject the Carrier to a claim for one day's pay. This was not contemplated under the 40-Hour Week Agreement."

It will be noted that in their October 27, 1955 letter the employees take the position that when rest days of a position are changed, the Carrier should be penalized whether the rest days are moved forward to earlier in the calendar week or set back to later in the calendar week. In Award 5854, the Board took note of this dilemma, and held that when the parties wrote the 40-Hour Work Week Agreement, they had no intention of so penalizing a Carrier. The claim should be denied, as not supported by the Working Agreement.

This claim has been handled in the usual manner up to and including the Vice President and General Manager the highest officer on the property designated to handle claims and grievances.

All data contained herein have in substance been presented to the employees and are part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Before a carrier may change the rest day of an employe it must comply with Rule 6(k)-2 which reads in part as follows, "by giving not less than seventy-two (72) hours' written notice to the employees affected."

The purported notice on which Carrier relies reads as follows:

"At 4 PM Monday June 20th positions of Operator-Leverman Malta will be abolished. R F Morelly and C L Fox will receive further instructions. E Paulsen junior, completes assignment June 19th will take five days vacation June 22nd to June 26th inclusive. Carry on Malta payroll at following swing assignment commencing (sic) Tuesday June 21st Tuesday and Wednesday 4 PM to 12 night Grand Rapids off Thursday (sic) and Friday 145AM to 945AM Ionia Saturday, 1 PM to 9 PM Sunday and Monday at Ionia. M R Wood and E Paulsen please advise intentions of exercising seniority in writing to this office.

JOINT HGM RAM RAM MRW CLF RFM SEB RSD JY OLM HHF

F. A. Summerhays

"Add this line my message after words Malta payroll at Malta rate swing operator R A Mullen exercising (sic) seniority will protect

F. A. Summerhays"

We think this notice ineffectual as applied to claimant, even though his initials HHF appear thereon and it is conceded he received a copy of this telegram.

Carrier's representative here says this was not the basis of the claim on the property, but asserts it here as complying with the rule, and the rules are always before us.

Without proper notice the change made by the Carrier was ineffective as to this claimant, and claim should be sustained. The Carrier violated the Agreement.

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 respective 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1959.