

Award No. 9627

Docket No. SG-8001

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Seaboard Air Line Railroad:

1. On September 1, 1954, the carrier violated and continues to violate its agreement with the Brotherhood of Railroad Signalmen of America in assigning certain signal employees to a Tuesday through Saturday work week, paying them for Saturday work at their pro rata rate, on positions which are filled only five days per week.

2. That such employees should be assigned to a Monday through Friday work week, with Saturday and Sunday as their rest days.

3. That such employees improperly not worked on Mondays should be paid 8 hours at their straight-time rate for all such Mondays not worked.

4. That such employees shall be paid the difference between their straight-time rate paid for work on Saturdays and their overtime rate for such Saturdays.

EMPLOYEES' STATEMENT OF FACTS: Pursuant to the negotiation of an agreement at Norfolk, Va., on June 30, 1949, the Carrier placed in effect, as of September 1, 1949, a shorter work week of forty-hours, consisting of five days of eight hours each with two consecutive rest days off in each seven for employees working on an hourly basis.

Hourly paid employees on 5-day positions are assigned Saturdays and Sundays as their rest days, except that the occupants of the following hourly paid 5-day positions are assigned Sundays and Mondays as their rest days.

signal failure. A single track operation like the Seaboard, with its 2000 miles of signalling is particularly vulnerable, and is absolutely essential that its signal system function at peak efficiency as free as possible of trouble and that such trouble that does occur be at once located and promptly repaired before trains are unduly delayed.

Your position in this case is the same as taken by you as General Chairman on the Southern Railway and your claim was denied by the Adjustment Board in Award 5545. The principle of Carrier's right to stagger the work weeks of employes has been consistently upheld by the Board in numerous awards, including Award 6184 covering a case on this property.

Your reference to Award 5804 is not persuasive. That award did not cover a staggered work week case and your attention is directed to the fact that Referee Carter, who participated therein, upheld the right of a carrier to stagger its forces in a six day operation in Awards 5555, 5556, 5557.

As stated to you, we do not see any merit to your claim and it is respectfully declined. We are not agreeable to joining you in submitting it to the Third Division."

The Agreement of September 1, 1954, referred to by General Chairman in his letter of October 29, 1954, is attached as Carrier's Exhibit "A".

The right of Carrier to stagger forces, as was done in this case with signal maintenance forces, has been so well established by the National Railroad Adjustment Board in numerous awards that Carrier sees no need to prolong the record in this case. Among the many awards clearly establishing this principle are Third Division Awards 5545, 5546, 5547, 5555, 5557, 6001, 6002, 6042, 6075, 6184, 6212, 6216, 6232, 6602, 6946; Second Division Awards 1528, 1565, 1566, 1644, 1669, 1883.

The Organization is simply trying to get the Board to eliminate from the agreement the right of Carrier to stagger forces and to provide for a uniform work week of Monday through Friday, which the Emergency Board that recommended establishment of the 40-hour work week declined to do, and which the Adjustment Board has consistently refused to do. As held in Third Division Award 6946, the staggering of work weeks is clearly of equal importance with the establishment of the 40-hour week itself; that it was one of the compensating factors that was of advantage to the Carriers when they agreed to the 40-hour work week with the same pay as the previous six day week.

There is no merit to the Organization's claim and it should be denied.

Carrier affirmatively states that all data contained herein has been made known to Organization representative.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the position of the Brotherhood that the Carrier has violated Rule 13(b)(1) since September 1, 1954, in assigning Sunday and Monday as rest days for certain employes over the entire system on an alternate section basis because the duties of their positions not only can be reasonably met in a work week of five days, but are actually met in a five-day work week. Rule 13(b)(1) provides that all positions, the duties of which can

be reasonably met in five days, the days off will be Saturday and Sunday with the exception that if an operational problem arises which the Carrier contends cannot be met under that rule and requires that some employees work Tuesday through Saturday and the employees contend to the contrary, and the parties fail to agree, then if the Carrier puts such assignments into effect, the dispute may be processed as a grievance or claim. The Carrier failed to consult the Brotherhood before assigning rest days other than Saturday and Sunday. Rule 13(b)(1) clearly contemplates such action before any such assignment. The Carrier's need for a Tuesday through Saturday work week on alternate sections was entirely eliminated when the Carrier placed into effect Award 5804.

The Carrier states that it is necessary for it to have signal maintenance service every day except Sunday over the signal-equipped portions of its lines. It had signal maintenance service on its lines prior to September 1, 1949, six days per week. The 40-hour work week agreement did not reduce the signal maintenance service. This operational practice has existed over a period of many years. Negotiations were carried on with the Brotherhood concerning the staggering of the work week prior to September 1, 1949, the effective date of the 40-hour work agreement.

From the record there is nothing shown which convinces us that the Carrier acted arbitrarily in continuing the six-day signal service practice after September 1, 1949. Accordingly, we find that the nature of the work is such that employees will be needed six days each week and the Carrier was justified in granting some signalmen rest days of Saturday and Sunday and other signalmen rest days of Sunday and Monday under Rule 13(b)(2) of the effective agreement. The Carrier did negotiate the question of having the work week staggered prior to the effective date of the 40-hour work week agreement. Award 5393 found that the Carrier was justified in stating that its operational practices showed the need for a six-day signal maintenance service on its lines; but the majority of the Board found affirmatively for the Brotherhood, because the Carrier had not designated regular relief assignments. The question of regular relief assignments is not before us and therefore that question will not be decided.

The time limit provision, Article V of the August 21, 1954 Agreement, has been complied with by the Organization.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1960.

DISSENT TO AWARD 9627, DOCKET SG-8001

The majority, consisting of the Carrier Members and the Referee, was well aware that since Award 5804 the only service, duties or operations performed on the maintenance territories of Claimants on Mondays, or on Saturdays in the case of employees assigned Monday through Friday, are those occasioned by an emergency and in such cases the regular assignees, if available, are used on an overtime basis. Therefore, it cannot properly be said that Claimants are assigned to positions with service, duties or operations necessary to be performed the specified number of days per week.

The majority's holding that the number of days the maintenance positions worked prior to September 1, 1949, is evidence that the positions continue to be six-day positions is neither realistic nor designed to give reasonable application to the rules. On the contrary, what the majority has done is not only contrary to the clear definition of "positions and work" as contained in Rule 13(a) but also makes the provisions for five day assignments in signal maintenance meaningless.

The majority has not interpreted and applied the rules in the light of the facts. Therefore, I dissent.

/s/ G. Orndorff
Labor Member