Award No. 9954
Docket No. TE-8599

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OR RAILROAD TELEGRAPHERS

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Georgia Railroad that:

1. Carrier is in violation of the agreement between the parties when it combined the work of the Telegraph Clerk with the work of the Agent Telegrapher at Milledgeville, Georgia, each Monday, beginning with the first Monday following September 1, 1949, continuing until March 23, 1951, requiring the Agent-Telegrapher to perform such combined duties on each such Monday, the assigned rest day of the Telegrapher-Clerk, and

2. When it combined the duties of the Agent Telegrapher with the duties of the Telegrapher-Clerk each Saturday for the same period of time named in paragraph 1, requiring the Telegrapher-Clerk to perform such combined duties on each Saturday, the assigned rest day of the Agent-Telegrapher, and

3. The Carrier shall now compensate the senior idle extra, available telegrapher for eight (8) hours at the straight time rate for each Monday and Saturday that the occupants of the positions named in paragraphs 1 and 2 were so used, or if no such extra idle available telegrapher, then the Carrier shall compensate the regular occupants of the positions of Agent-Telegrapher and Telegrapher-Clerk at Milledgeville, Ga., for eight (8) hours at the time and one-half rate for each such Monday and Saturday that such violation of the agreement existed.

4. Where a holiday is involved the compensation for any employe shall be at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The facts and rules of the agreement involved in this claim are exactly similar to the facts and rules submitted in Award 6690 between the same two parties which was sustained on the 25th day of June 1954, for a violation at Thompson, Ga. In view of this exact parallel this case was not submitted to the Adjustment Board and it was believed that the decision rendered in the Thompson case would govern the disposition of both cases.

tation placed upon classes or classification of work. Award 6690 appears to have adopted the same erroneous conclusions. We think the foregoing awards fail to consider the overall purpose of the 40-Hour Week Agreement. They fail to consider all of the provisions of that Agreement and give stress to particular provisions which create an illusory result. A part of the bargain for a five day week at the then existing pay for six days' work, was the right of the Carrier to eliminate the necessary rest day work to the extent that it could by the expedient of staggering work weeks."

The attention of the Division is respectfully called to its Awards 5545, 5555, 5557, 6001, 6002, 6042, 6075, 6184, 6212, 6216, 6232, 6602 and Second Division Awards 1528, 1565, 1566, 1644, 1669.

For the reasons outlined above, it is our opinion claim is without merit and we respectfully request it be declined.

All data contained herein has been made available to Petitioners.

OPINION OF BOARD: The Carrier employs an Agent-Telegrapher and a Telegrapher-Clerk in its station at Milledgeville, Georgia. With the inauguration of the forty hour week September 1, 1949, the Carrier staggered the work weeks in accordance with operational requirements, the Agent-Telegrapher being assigned to work Monday through Friday with Saturday and Sunday as rest days and the Telegrapher-Clerk to work Tuesday through Saturday with Sunday and Monday as rest days. Both the Agent-Telegrapher and the Telegrapher-Clerk are covered by the Agreement, are in the same seniority district and perform the same class of work.

Petitioner contends that Carrier cannot stagger work weeks under the circumstances stated and relies particularly on Award 6690-Leiserson which involved these same parties, the same agreement, a similar factual situation but a different town.

Carrier relies particularly on Award 6946-Carter, which not only involved similar, if not identical, rules and a similar factual situation, but which reached a result contrary to Award 6690 and expressly overruled that award. The question here presented, therefore, is whether this Board should uphold, Award 6690 or Award 6946.

This Division has long held that, unless palpably wrong, the Board is never warranted in overruling, in a subsequent dispute, a previous Award construing the same provision in their agreement. Awards 7968-Elkouri, 8104-Guthrie, 8687-Lynch; and whether a prior award constitutes a controlling precedent is dependent upon the soundness of the reasoning upon which it is based. Awards 8687-Lynch, 4516-Carter, 6094-Whiting, 4770-Stone, and others.

The arguments used by the petitioner in what became Award 6690 were the same as those in the docket decided by Award 6946, and in rejecting them it was said:

"The question raised as to whether or not the occupant of a position may be used on one of his regularly assigned days to do work on a rest day of a different position having different duties by combining such necessary duties with those of his own position, is a wholly different matter. The Division appears to have passed on the

question several times with conflicting results. We shall attempt to resolve the issue by a careful and complete consideration of the applicable rules and the intendments of the parties that may be drawn therefrom.

The Organization relies primarily upon the following rules, the pertinent parts of which are:

> 'Section 6. The Carriers will establish, effective September 1, 1949, for all employes, subject to the exceptions contained in the Sections 6-22, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Agreement: * * *.' Article 3, Sec. 6, Current Agreement.
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> Section 14. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all all other cases by the regular employe.' Article 3, Sect. 14, Current Agreement.

"Other rules are relied upon which we do not deem necessary to quote. We shall refer to their provisions when the need arises. The Carrier relies substantially upon the same agreement provisions. The dispute grows out of the different meanings which the parties have gathered from identical language.

The situation at Stillwater, briefly is: The Telegrapher-Clerk was assigned Tuesday through Saturday and the Agent-Telegrapher was assigned Monday through Friday, after September 1, 1949. On Mondays and Saturdays each was required to do whatever work was necessary to be done, including some of the duties of the other. Both employes belonged to the Telegraphers craft, were in the same seniority district, were carried on the same seniority roster, and each was qualified to perform the work of the other. The positions were not identical and the rates of pay were different. The Organization asserts that the assignments are violative of agreement rules and claim is made for reparations on that basis.

The record and briefs are long and the awards cited are numerous. We cannot hope to exhaustively discuss each phase of the case in detail. We shall confine the opinion to a statement of our conclusions and a concise exposition of the reasons upon which they rest.

It will be noted that the staggering of work weeks is an integral part of Article III, Section 6. It is clearly of equal importance with the establishment of the 40 hour week itself. In other words, the establishing of the 40 hour week with two rest days in seven and the staggering of work weeks in accordance with the carriers' operational requirements are the two primary provisions of the 40 Hour Week Agreement, even though they are subject to other

provisions of that agreement. It is plain that the right to stagger work weeks to meet carriers' operational requirements was of equal importance with the establishment of the 40 hour work week itself. We must conclude that the establishment of the 40 hour week without a reduction in weekly pay carried with it the idea that the carriers could eliminate certain unnecessary employes through the process of staggering work weeks. 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. Award 5545.

The next question that naturally follows is what positions might be staggered to accomplish the purposes of the agreement. It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one. Two positions occupied by a signalman and a telegrapher, for instance, could not be staggered as craft lines are not wiped out by the 40 Hour Week Agreement. Neither could two employes in the same craft holding positions in different seniority districts be staggered under this agreement; nor may two positions in different classes be staggered where common seniority between the classes does not exist. But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other. If these are the proper concepts contained in the 40 Hour Week Agreement, and we think they are, the Carrier had the right to stagger the two positions in the dispute before us. The fact that Carrier changed the duties of the positions as of September 1, 1949, in order that the positions could be staggered to meet operational needs is not a material fact. Either party may do these things which the contract permits for any reason that he deems sufficient.

The claim that the rest days of six day positions must be filled under the circumstances here shown is without merit. It was clearly contemplated that work weeks could be staggered in accordance with the carriers' operational requirements in order to reduce the costs of operation. It is only when carriers' operations require rest days to be worked that the rules governing rest day work come into play. When work on rest days of six and seven day positions is required, the carriers are obligated under Section 10-a to establish all possible relief assignments with five days of work. Such regular relief assignments are not required to be established except where carriers' operational requirements make them necessary.

Where work remains to be performed on unassigned days remaining after all regular relief assignments have been made which are possible to be made, Section 14 provides that it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week and, in all other cases, by the regular employe. This rule means just what it says, as we have consistently held, and when the work involved falls within its terms, the Carrier has no alternative method of getting the work done. But in the case before us, the Carrier procurred the performance of all necessary work on the days involved by the expedient of staggering the work weeks of the Agent-Telegrapher and the Telegrapher-Ticket Clerk. Under such circumstances the rules governing regular relief assign-

ments and work on unassigned days have no application. We have repeatedly held, and correctly we think, that the assignment of regular relief positions and of work on unassigned days is not a condition precedent to the staggering of work weeks. The meaning of the 40 Hour Work Week Agreement is quite the contrary; the Carrier may procure the performance of all necessary work that it can by the staggering of work weeks before the assignment of rest day work comes into the picture. It is clear, therefore that the Carrier did not violate the Agreement under the facts and circumstances shown in the present case.

The foregoing conclusions are sustained generally by Awards 5545, 5555, 5557, 6001, 6002, 6042, 6075, 6184, 6212, 6216, 6232, 6602. Awards 1528, 1528, 1565. 1566, 1644, 1669 Second Division.

The position of the Organization has support under some of the previous holdings of the Board. We feel obligated under such circumstances, to point out our reasons for not accepting the interpretation it places upon the Agreement.

It is pointed out that since the origin of 'rest days' as we now understand them, the idea has prevailed that work on rest days should be assigned to a regular relief employe; or if there is no such employe available, to an extra employe; and if there is neither a relief or extra employe available, then the regular employe is to be used on an overtime basis. For the purpose of this case, we accept this statement as being correct on this Carrier prior to September 1, 1949, under the provisions of Mediation Agreement A-2070. We grant, also, that the same provisions relative to rest day work were retained after the advent of the 40 hour week **when rest day rules became applicable under that agreement.** But they did not become applicable until the expedient of staggering work weeks was first applied to meet operational needs. It the work necessary to be performed can be done through the expedient of staggering work weeks of regularly assigned employe, the necessity for rest day relief assignments does not exist. The relationship of Mediation Agreement A-2070 to the present situation is discussed in Award 6184 and although the discussion is in connection with a dispute on another carrier, the general holdings of that award control the situation before us. We necessarily conclude that rest day work is to be assigned just as it was prior to the 40 Hour Week Agreement when it is necessary to be assigned.

The Carrier asserts that the language 'all possible regular relief assignments * * * will be established to do the work necessary on rest days' contained in Section 10-a, means that relief positions need not be established unless they are necessary and that the staggering of work weeks permits the combining of rest day work with the work of another position. The Organization strongly excepts to this construction. But nonetheless, the position of the Carrier is the correct one when it is applied within the limitations which we have heretofore set out. We quite agree that there is work to be performed on each day of a six day position, but rest day assignments are necessary only when staggering of regular five day work week assignments will not meet the needs of carriers' operations. To hold otherwise would be to deprive the Carrier of a rule it bought in agreeing to the 40 hour week with pay on a 48 hour basis." (Emphasis theirs.)

See **Awards 5545** (Elson), **5555, 5556, 5557, 6947, 6948, 7073, 7317,** (Carter), **5912** (Douglass, D. R.), **6001** (Daugherty), **6023** (Parker), **6042** (Whiting), **6075, 9199** (Begley), **6184, 6212** (Wenke), **6232** (Stone), **6602** (Sharpe), **8003, 8531** (Bailer), **8136, 8137, 8138, 8139, 9504** (Elkouri), **8278** (Lynch), **9030, 9105, 9392** (Hornbeck), **9042, 9043** (Weston) and **Awards 9574, 9575** (H. A. Johnson), **9772, 9773** (Larkin), as well as **Second Division Awards 1528** (Parker), **1565, 1566** (Wenke), and **1644, 1669** (Carter), among others.

Award 6688 reached the same conclusion as Award 6690 and with respect to these Awards it was further held in Award 6946,—

> We point out that no effect is given to the right of Carrier to stagger work weeks in Award 6688. The award holds: 'We cannot agree that it does have the right so to combine the two assignments of different classifications so that on Saturday one employe will perform the duties of both.' We quite agree with this controlling provision if the 'different classifications' do not have common seniority. This is the meaning given the provision in Award 6184, which we think is the correct one. It must be borne in mind that classifications of employes may be made on trifling differences for many different reasons. The classifications which are of interest here are those which have some relation to the issue before us. A classification for pay purposes or the exercise of orderly displacements is not such. It is classifications for purposes of seniority only that have application here. It appears from Award 6688 that the employes involved were of the same craft, in the same seniority district, carried on the same seniority roster, were in classes having common seniority, and were qualified to perform the work involved.
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> Under such circumstances, we cannot agree with the result reached. We think the right to stagger work weeks in accordance with carriers' operational requirements contemplates that such positions may be staggered for the very purpose of avoiding the assignment of rest day work which is not necessary to the economic and efficient operation of the railroad. We cannot agree with the holdings of Award 6688 with reference to carriers' right to stagger work weeks or with the interpretation placed upon classes or classifications of work. Award 6690 appears to have adopted the same erroneous conclusions. We think the foregoing awards fail to consider the overall purpose of the 40 Hour Week Agreement. They fail to consider all of the provisions of that Agreement and give stress to particular provisions which create an illusory result. A part of the bargain for a five day week at the then existing pay for six days' work, was the right of the Carrier to eliminate the necessary rest day work to the extent that it could by the expedient of staggering work weeks."

See **Awards 7073, 7317** (Carter), **8003, 8531** (Bailer), **8137, 8138, 8139** (Elkouri), **8278** (Lynch), **9030, 9105** (Hornbeck), **9042, 9043** (Weston), **9119** (Begley), and **9574, 9575** (H. A. Johnson), previously cited herein.

The Opinion of the Board in Award 6946, thus quoted from at length, presents more fully and capably the position of this Board than could be done in any other way. Written by Judge Carter, a Referee who wrote more opinions over a greater period of years than any other, it indicates clearly that Awards 6690 and 6688 tend to emasculate and weaken the provision for staggered work weeks and therefore Award 6946 should be followed.

This Board therefore disapproves the holding in Awards 6688 and 6690 (insofar as herein indicated) and affirms our holding in Award 6946.

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 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 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 26th day of May, 1961.

DISSENT TO AWARD 9954, DOCKET TE-8599

The majority here, as in numerous other cases, has merely followed the erroneous holdings of Award 6946.

My dissents to Awards 9574 and 9575 amply set forth my reasons for disagreeing with such decisions, and apply with equal force here. They are, by this reference, extended to the present case, Award 9954, which I consider to be equally erroneous.

J. W. Whitehouse
Labor Member