Award No. 10171

Docket No. SG-9559

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(Nashville, Chattanooga and St. Louis District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Nashville, Chattanooga and St. Louis Railway:

In behalf of occupants of positions designated, in Bulletin No. 688 dated November 14, 1955, as No. 2, Signal Maintainer, and No. 4, Assistant Signal Maintainer, with headquarters at Chattanooga, Tennessee, for payment of time and one-half instead of pro rata rate for each Saturday and Sunday they are improperly assigned to work these days.

EMPLOYES' STATEMENT OF FACTS: Prior to November 26, 1955, there were no seven-day signal maintenance positions assigned with headquarters at Chattanooga, Tennessee. The signal employes assigned to maintenance positions with headquarters at Chattanooga, Tennessee, prior to November 26, 1955, were two Signal Maintainers and two Assistant Signal Maintainers, all with a five-day (Monday through Friday) work week with Saturday and Sunday as their rest days.

Prior to November 26, 1955, the signal maintenance positions with headquarters at Chattanooga, Tennessee, were divided into two maintenance territories and locations at Chattanooga, Tennessee. One maintenance position was located at Lewis Street, Chatanooga, and the other was at East End Avenue, Chattanooga. The Lewis Street maintenance territory consisted of two interlocking plants in the city of Chattanooga and fifteen miles of double track automatic signaling. The East End Avenue maintenance territory consisted of an interlocking plant and ten crossing protection signals (bells) in Chattanooga and three crossing protection signals (bells) and one crossing protection signal gate, and an automatic interlocking plant at Attalla, Alabama.

Prior to the signing of the Forty-Hour Week Agreement, the same number of signal employes were assigned with headquarters at Chattanooga, Tennessee, each with a six-day work week (Monday through Saturday). After the effective date of the Forty-Hour Week Agreement, these positions were made five-day work week positions (Monday through Friday) with Saturday and Sunday as off days, and continued as such until November 26 and 28, 1955.

Carrier submits the facts involved conclusively show:

(1) That the positions involved are properly classifiable as seven day positions;

(2) That the positions established by Bulletin 688 are in accordance with the provisions of Rule 13; and

(3) Claimants have not been improperly assigned to work on Saturdays and Sundays, as alleged by the Employes.

In view of the foregoing facts, there obviously is no basis for the claim and same should be denied.

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employes, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim here is made on behalf of Signal Maintainer, holding Position No. 2 and Assistant Maintainer Position No. 4, as set out in Bulletin No. 688 issued by Carrier on November 14, 1955, listing positions No. 1-2-3-4 for bid. The claim here is based upon the action of Carrier in awarding positions No. 2 and No. 4 having a work week of Saturday through Wednesday, with rest days Thursday and Friday. The Organization objects to the assignments as made by Carrier, and contends that the specific employes are assigned to five day positions, and as such their rest days should be Saturday and Sunday, not Thursday and Friday as the assignments were made. All in accordance with the provisions of Rule 13 (c) (1). It is argued that such change was made arbitrarily by Carrier, that no operational conditions were involved, which would justify the positions being changed to seven day positions, in order that Carrier may use such incumbents to perform service on Saturdays and Sundays, as provided under Rule 14, of the effective Agreement, covering "Rest Day and Holiday Work."

Carrier argues that it abolished the former position covering the territory involved here, and created the new assignments as seven day positions as provided for by the provisions of Rule 13 (c) (3). That its purpose, in establishing the positions described in the bulletin, was to enable Carrier to maintain its interlocking system, also used by other railroads, on a twenty-four hour per day, seven days per week, continuous basis. By doing so Carrier contends it was authorized to stagger the work of the employes to meet its operational requirements, and relies on Rule 13 (b) to support such contention.

Many awards have been cited to the Board by the parties, and your Referee has reviewed many of the citations in detail. Many of the cited awards lend support to the contentions of each of the parties.

The Board, after a thorough discussion, and review of the Record before us, together with the numerous citations relied on by the parties, is of the opinion that this Division previously has expressed itself in other awards, and has followed the reasoning and principles as set out in Award No. 6946. The docket here before us should be determined, as applicable to the holdings made by the above cited award.

It should be noted that Carrier's Exhibits B, C and G were given no consideration by the Board in reaching its conclusion in this docket, for the reason that such matters set out in such exhibits were not discussed on the property by the parties here, nor does the record disclose that such exhibits were presented to the Organization, but were attached to Carrier's submission filed with the Board. The Board has held in previous awards, that such information contained, constitutes new evidence not provided the Organization on the property and is improper, and should be wholly disregarded by this Board.

The record here is sufficient to support the contention of Carrier, that it was proper to stagger the work assigned to positions No. 2 and 4, in order that its signal requirements be properly maintained. See Rule 13 (c) of the effective Agreement. The record does not show that Carrier required signal maintenance work be performed on the rest days assigned to Positions No. 2 and No. 4, when such work could be dispensed with except that only such work was performed as to enable Carrier to maintain its signal operation requirements to avoid excess delay of trains, such as is required at the particular interlocking operation location, where in addition to trains of Carrier, trains of other carriers operate here, and such service is required to be maintained around the clock.

Neither the rules relied upon nor the record before us, supports a sustaining Award.

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 provisions of the Agreement as alleged.

AWARD

Claims denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 13th day of November 1961.

DISSENT TO AWARD 10171, DOCKET SG-9559

This is a case where the majority, consisting of the Referee and the Carrier Members, tailor the issue to fit the Carrier's argument. Award 6946, relied upon by the majority, had nothing whatsoever to do with the inauguration or establishment of seven-day positions. Therefore, the majority errs

in holding that the instant dispute is disposed of by the reasoning and principles set out in Award 6946.

The irony of it is that the majority knew about but ignored other awards dealing with the question of alleged seven-day positions and which definitely supported the Employes in this case. One of them, 6856, was by the author of 6946.

The majority very properly finds that Carrier's Exhibits B, C and G, having been brought to light for the first time in Carrier's Ex Parte, are not admissible. Unfortunately, the basis upon which the majority's conclusion is reached strongly indicates that the content of Carrier's Exhibits B, C and G was considered.

The reasoning and decision in Award 10171 is designed to justify the position of Carrier instead of to interpret the rules in light of the facts; therefore, I dissent.

/s/ G. Orndorff
Labor Member