Award No. 10253
Docket No. CL-9443

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When on Sunday, July 1, 1956, and subsequent Sundays, it compensated employes for their services performed as Warehouse Foreman, Assistant Warehouse Foreman, Delivery Clerks and Stevedores, at Settegast Freight Station, Houston, Texas, at pro rata rate of pay.

2. That each employe occupying such positions be paid the difference between pro rata and overtime rate for services performed on Sunday, July 1, 1956, and like restitution be made to all employes for services performed on subsequent Sundays until the rule violation is corrected.

NOTE: Reparation due employes to be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary to establish proper claimants and amounts due.

EMPLOYES' STATEMENT OF FACTS: The Settegast Freight Station of the Houston Belt and Terminal Railroad began operation on June 1, 1950. Settegast Freight Station is part of the new Settegast Yards located about ten miles northeast of Houston, Texas.

All positions in the Settegast Freight Sation were five (5) day per week positions from date the Settegast Freight Station was opened in June 1950 until December 1950 when Carrier established a six (6) day per week service under a staggered work week arrangement, working some of the employes on a Tuesday to Saturday assignment and the balance on a Monday to Friday assignment. Employes' Exhibits "A", and "B", pages 1, 2 and 3.

The staggered work week continued until November 1951 when seven (7) day per week positions were established due, so Carrier stated, to necessity of handling their St. Louis and Memphis merchandise and making deliveries on same basis as Car-loading Company competitors with the understanding that it would be discontinued upon our request. Employes' Exhibit "C".

operation, and that where such a necessity can be shown a seven-day operation is permissible.

This Carrier, therefore, respectfully requests that the contention of the Employes be dismissed and the position of Carrier unqualifiedly sustained.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier is a switching and terminal company which serves the City of Houston, Texas. On June 1, 1950, the Carrier put into operation a new freight house, Settegast Freight Station, which was set up as a six-day operation, Monday through Saturday. With the opening of the new freight station, the use of Carrier's Crawford Street Freight Station changed. That freight station was operated, before and after September 1, 1949, on a six-day basis with occasional Sunday work at the time and one-half rate.

According to the Carrier, it was necessary to work employes on the first Sunday the new freight station was open and on succeeding Sundays. About July 7, 1950, by arrangement between the General Chairman and the General Manager one gang was assigned rest days of Tuesday and Wednesday on an experimental basis. This was not regarded as successful by the Carrier and was terminated. Sunday work was almost entirely eliminated after October 8, 1950.

According to the Carrier, tonnage began getting heavy at Settegast Freight Station in August, 1951, reaching a peak in October, 1951, and, to meet the situations which developed and to maintain its business at the location, a force was worked on Sundays. About the middle of November, 1951, the Carrier indicated to the General Chairman that a seven-day operation would be started by assigning as seven-day positions four clerks' jobs and fifteen stevedores' jobs with necessary regular relief assignments. After protesting this action, and conferences, the General Chairman by letter dated December 19, 1951, confirmed to the General Manager that "As stated to you during our conference this morning, the Sunday operations are in violation of the agreement, however, we stated to you that you may continue such Sunday operations with the understanding it will be discontinued if requested by us."

On April 16, 1956, a new General Chairman requested that the Sunday operation at Settegast be discontinued. After conferences, he advised that approval of the Sunday operation would terminate on July 1, 1956. The Carrier declined to discontinue such operation by letter dated July 11, 1956, in which it stated its reasons for this position. Thereafter, the claim was filed and declined by the Carrier. Appeal here followed.

The Organization contends that the Carrier violated the applicable Agreement by continuing the seven-day operation at Settegast Freight Station after July 1, 1956, for the reasons that seven-day positions had not been filled prior to September 1, 1949, that Rule 37(C-4) precludes the establishment of such positions after September 1, 1949 when seven-day positions had not been filled prior to that date, and that Rule 47(a) only permits the increase or decrease of the number of employes on seven-day positions which had been filled prior to September 1, 1949, according to the "amount or nature of traffic or business and seasonal fluctuations."

It is the Carrier's position that the establishment and continuance of a seven-day operation at Settegast was in compliance with the Agreement because Sunday work became necessary.

The issue posed by this claim and these contentions is not one of first impression and has confronted this Board on more than one occasion. Awards 5548, 5549, 5710, 6502, 7370 and 9568 involved the same question, and the results turned on two factual considerations, namely, (1) whether the seven-day operation existed prior to September 1, 1949, and (2) whether it was established on the record presented that the seven-day operation or Sunday work was necessary at the facility involved in the dispute. Because neither consideration could be determined affirmatively, these Awards resolved the issue in the negative. Thus, for example, Award 6502 held:

> "Since there were no seven-day positions prior to September 1, 1949, and the operational requirements could be met by six-day positions supplemented by Sunday calls, we think the rules require the Carrier to continue this method of handling the work, in the absence of changes in traffic or business that might make it necessary to work full days on Sundays the same as week days. (Award 5710 reaches the same result in a similar situation)."

Award 6695, cited by the Organization, involving rules which were substantially the same as those in the instant case, also recognized the decisive significance of, and gave consideration to, whether it was established that the Sunday work was necessary by stating that:

> "The only remaining rule on which the asserted right could be based is 32(c) which governs work on Sundays, and the Carrier's main reliance is on this rule . . .
>
> "This Division and also the Second Division have had occasion to consider the question involved in this dispute in a number of cases. In our Award 5247 the Carrier's asserted right to 7-day operation was denied. In Award 6075 we upheld the Carrier's right to so work certain accounting positions. Similarly, the Second Division ruled in Award 1566 that a carrier could not properly assign certain car maintenance work to be done on Sunday at straight time rates, while in Award 1599 it held that car repair forces could be staggered on a 7-day basis at straight time rates. But these Awards laid down the principles for interpreting rules like 32(c), namely that the carrier's right to determine his operational requirements are subject to its contractual obligations under the 40-Hour Agreement, and that mere desirability or efficiency is not enough to authorize 7-day operation or Sunday work where this has been previously dispensed with; **there must be necessity for such operation or work.**
>
> "Depending on whether the facts in each case met these principles or not, the right to Sunday and Saturday work at straight time rates was held to be permissible or not permissible. Where such facts were not available, the case was remanded to the parties (Award 5581). We believe this is the proper interpretation of Rule 32(c) and is controlling in the present case. But it is to be noted that each of the previous Awards deal with particular operational requirements at specific facilities, and the bases of those Awards were not the general state of business, traffic or competition in the railroad industry as a whole, but were concerned with the facts relating directly with the operational requirements of the particular facility involved in the dispute.

"**We think the wording of Rule 32(c) plainly applies to specific needs for Sunday or 7-day service at particular places,** and not to general changes affecting the business of most railroads which might make it desirable from the Carrier's point of view to reduce costs by eliminating punitive overtime rates provided for in the Agreement, in addition to the rates for Sunday as such which were eliminated . . .

". . . **The proposal submitted by the Carrier is not supported by evidence that Sunday work is actually necessary.** The evidence shows only that it is desired by the Carrier if it is permissible at straight time rates and no additional workers need be employed." (Emphasis ours)

Awards 5247 and 6856, cited in support of Carrier's position, regarded the necessity for Sunday work as the determining consideration. Award 6856 involved a claim that "Carrier violated the current Clerks' Agreement when on or about August 18, 1952, it established a seven-day operation at its freight transfer platform at Hornell, New York, when the operation was in fact a six-day operation under the controlling agreement" and states:

"This Board has held that seven day positions can be created even though the work was not so assigned prior to September 1, 1949, if such work is necessary to be performed on Sundays. Awards 1566, 1599, 1644, 1669, 1712, 1714, Second Division; 5247, 6018, Third Division. The non-performance of the work on Sunday prior to September 1, 1949, constitutes strong evidence that it was not required after that date. The Agreement does not prohibit the assignment of work on Sunday after September 1, 1949, although not so assigned prior thereto. The proof, however, must be sufficient to overcome the presumption that it was not necessary to be performed on Sunday because of the fact that it was not so performed prior to the 40-Hour Week Agreement. Award 1644, Second Division . . .

"We hold that the Carrier has produced evidence tending to show that a seven-day operation was necessary which is sufficient to overcome the presumption arising from the fact that it was a six day operation immediately prior to September 1, 1949. The Organization has failed to produce evidence to overcome that of the Carrier. We must conclude therefore that the seven-day operation was necessary, that the installing of the seven-day operation was not violative of the agreement, and that no basis exists for an affirmative award."

We are not persuaded that the Awards referred to are erroneous insofar as they gave determinative significance to whether the Sunday work involved was necessary. On the basis of these Awards, and because the record establishes, without sufficient refutation, that the seven-day operation or Sunday work at the facility involved became and was necessary, we must find that the agreement was not violated. See Awards 5247, 6856.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1961.

LABOR MEMBER'S DISSENT TO AWARD NO. 10253,
DOCKET NO. CL-9443

The majority, including the Referee and Carrier Members, have committed grievous error in ignoring the clear and unambiguous provisions of Rules 37 (c-4) and 47 (a), the following emphasized portions thereof being controlling here:

"37(c-4) **Seven-day Positions—**

On positions which have been filled seven (7) days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

Rule 47 — Sunday and Holiday Work.

(a) Sunday Work.

Existing provisions that punitive rates will be paid for Sunday as such are eliminated. **The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with.** On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949 with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. **This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday.** The intent is to recognize that the number of people on necessary Sunday work may change."

Rule 37 (c-4) is clearly written in the past tense as it refers to "positions which have been filled seven (7) days per week" and provides only under such circumstances that "any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday." This definitely ties 7-day "positions" and "work" or service, duties, or operations necessary to that which was "filled" or performed 7-days per week prior to September 1, 1949.

That this was the intent of the parties is evidenced by the clear language used in Rule 47 (a) in respect to the elimination of "existing provisions that punitive rates will be paid for Sunday as such." The parties agreed:

"The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with" and "This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday."

Inasmuch as Rule 37 (c-4) prohibits the assignment of Sunday as a work day only on positions that had been filled 7-days per week prior to September 1, 1949, it must be considered in arriving at the intent and purpose of Rule 47 (a), which governs work performed on Sundays.

Rule 47 (a) in no manner whatsoever governs the establishment of 5, 6 or 7 day positions, or the work weeks and rest days to be assigned thereto. This subject is reserved to the special provisions of Rule 37 (c-2), (c-3), (c-4) and (c-6). Rule 47 is a general provision that governs Sunday and holiday work. It concerns itself with the rate to be paid for work performed on such days. However, the work weeks and rest days are established in accordance with Rule 37, not Rule 47.

While it is true that Rule 47 (a) eliminates the punitive rate on Sunday, it does not create Sunday as a regular work day, nor does it establish Sunday as a rest day. However, by the elimination of the punitive rate for Sunday work, where such day is a regular work day under Rule 37 (c-4), the necessity of filling the 7-day position in the absence of the regular incumbent ceased as had previously been the case under the old Rule governing positions necessary to continuous operations.

It will also be noted that Rule 47 contains the phrases that: "the precise pattern that may be in effect prior to September 1, 1949, with regard to the **amount** of Sunday work that may be necessary is not required" and that the "intent is to recognize that the number of people of necessary Sunday work may change."

The "pattern" and "number of people on necessary Sunday work" must be considered in the light of Rule 37 (c-4), the latter being the only rule in the Agreement that established Sunday as a regular work day. When viewed in this light we find that the number of employes assigned to "positions which have been filled seven (7) days per week" prior to September 1, 1949, may be increased or decreased according to the "amount or nature of traffic or business and seasonal fluctuations". However, it was not contemplated that 5 and 6 day positions could be changed to 7 day positions at the will or caprice of carrier on the contention that there was need for such service. Rule 37 (c-4) does not allow Sunday to be included as a regular work day because of a "need" therefor. Sunday can only be included "on positions which have been filled seven (7) days per week" prior to September 1, 1949.

The working of an excess number of employes on Sunday, as a part of their regular work weeks, has been a bone of contention between the parties for a long period of time. Consequently, they attempt to clarify their rights in Rule 47. Carrier was given the right to increase the number of employes assigned to work Sunday when the need arose in the same service that had been performed previously on Sunday at the pro rata rate. The Employes, on the other hand, were given assurance that Sunday work would not be required in the types of work where it had not been performed previously.

Therefore, those referees who have held that the "need" for such operation was the controlling factor were in error, whether they sustained the Employes'

claim or not. The controlling factor is clearly stated in Rule 37 (c-4) and the addition of the factor of "needed" in carrier's operational requirements into disputes of this kind, constitutes contract making, which the Board is not authorized to do. See Awards 6856, 6695.

In Second Division Award 1599, the Board held in part that:

> "One approach to this problem would be to show that before the 40-hour week agreement was signed the carrier did not employ men on 'running' car repairs on Sundays. That is, if such a showing could be made, there might well be a presumption that what was not necessary earlier has not been necessary since 1949. **We do not find that the organization has succeeded in sustaining this portion of its burden of proof.**" (Emphasis ours)

Facts similar to those confronting the Board in Award 1599 were present in Awards 1608 to 1617, inclusive, and held the decision in the former was controlling. Awards 1644 through 1655, a similar situation was present, the Board again predicating its conclusions on Award 1599 and several Third Division Awards. A review of these awards will show that the referees were impressed by the language in Rules similar to Rule 47 (a) here and erroneously considered it as an establishment of a work-week rule and thereby wrote Rules similar to Rule 37 (c-4) out of the Agreement.

Award 5247, Referee Boyd, appears to be the first dispute covering the institution of 7-day operations referred to this Division. The claim was submitted by the carrier requesting an interpretation sustaining its position. The Board denied the Carrier's claim. However, the seeds for further confusion were sown when it was held that a rule identical to Rule 47 (a) contained a "condition precedent to assigning work to include Sunday is that the work must be necessary."

Award 6018, Referee Parker, the same parties were involved there as in Award 5247, although the factual situation was different. Claimant was an extra employe with seniority in both Seniority Groups 1 and 3. He was worked as an extra employe on four Sundays and three Saturdays, such work being no part of any assignment. The claim was denied on rules that are not involved in the instant dispute.

Award 6075, Referee Begley, held that:

> "The evidence produced by the Carrier is sufficient to maintain its position that the nature of the work is such that employes were needed seven days each week at this facility, **prior to and subsequent to September 1, 1949.**" (Emphasis ours)

The record shows that Sunday was a regularly assigned work day prior to the 40-Hour Week Agreement. The Award fails to support the majority's position here, as Sunday was not a regularly assigned rest day either before or after September 1, 1949.

Award 6856, Referee Carter, involved a similar dispute, although claim involved 119 employes where carrier established seven day operations at its freight transfer platform at Hornell, New York. However, the controlling facts are clearly distinguishable. As it was admitted that 7-day operations were in effect prior to September 1, 1949. See penultimate paragraph "Carrier's Statement of Facts", page 11 of the printed Award. However, Referee Carter

did not dwell on this important factor, but introduces a lot of obiter dicta in an attempt to overcome the effect of Award 6695, authorized by a member of the Presidential Emergency Board who heard all the testimony and helped draft the Board's recommendations from which the 40-Hour Week Agreement emerged. Award 6856 is patently in error as it places a false construction on otherwise clear and unambiguous language of the controlling rules.

The following awards have sustained the Employes' claim under similar situations and should have been followed:

Award 5710, Referee Munro, involved a situation where claimant was assigned Monday through Saturday, Sunday rest day. He was given a call on Sundays prior to September 1, 1949. Subsequent thereto his assignment was changed to Thursday through Monday. In considering a rule (30 (d)) similar to Rule 37 (c-4), although such rule was tied in with a rule identical with Rule 47 (a), Referee Munro said:

> "Both sides agree the above facts raise the issue of whether Carrier's act constitutes a violation of Schedule Rule 30. With reference to part (d) of said rule we note the rule reads 'seven days per week' not seven days or parts or portions thereof. We think 'days' as used in the Rule means no more, no less than a full working day. **The job in question was not filled seven days per week preceding the above mentioned date.** Nor do we find those circumstances present in the record which would justify Carrier's act in establishing a seven day job." (Emphasis ours)

It will be noted that the parties were in agreement that the only rule involved was the "Seven-Day Position" Rule at the time this claim arose on September 1, 1949. It will be noted, however, that the Award was rendered on April 4, 1952, which was subsequent to Award 5245. A review of Carrier Members' dissent to Award 5710 shows that they rely chiefly on Award 5247 in support of their position, which clearly shows that Carriers changed their position on this question after the effective date of the Forty Hour Week Agreement. Carrier got what it wanted in Award 5247, although its claim was denied.

Awards 5548 and 5549, Referee Elson, sustains the Employes' claims where carrier changed 6-day positions to 7-day positions subsequent to September 1, 1949. The Referee attempted, however, to distinguish the factual situation from Award 5247, relied upon by the carrier and erroneously found that "Neither has the Carrier shown any change in operations which would justify establishing the positions as 7-day positions," instead of overruling erroneous opinion expressed in that Award.

Award 6502, Referee Leiserson, a Member of the Emergency Board recommending the 40-Hour Week, ruled that Carrier violated the Agreement when 6-day positions were changed to 7-day positions subsequent to September 1, 1949. He said:

> "Thus the issue is whether the fact that some work was necessary every Sunday, which could be done on calls by part of the trace force, made the jobs seven-day or six-day positions."

Referee Leiserson comments on denial Award 5247 and others and found:

"Accordingly the claimants were improperly assigned under Rule 25(d); and there was a violation of 25(c), which provides for rest days either on Saturday and Sunday or Sunday and Monday."

It should be noted that Sunday work was performed prior to September 1, 1949, under the call rule, which is partially true here.

Award 6695 was also written by Referee Leiserson covering a dispute on the New York Central. Carrier referred the dispute to the Board claiming it had a right under existing rules of the 40-Hour Week Agreement to inaugurate 7-day operations at freight stations where 6-day operations had been in effect prior thereto. Referee Leiserson extensively reviewed Carrier's contentions that an operational problem existed that could only be met by 7-day service. However, he rejected Carrier's claim and sustained the Employes' contentions. He said:

"This claim can only be upheld if the contractual provisions of its 40-Hour Agreement with the Clerks permit it. Examining Rule 35(d) which governs 7-day service, we find that the rule states that any two consecutive days may be the rest days on positions which **'have been filled 7 days per week.'** (Emphasis ours). Admittedly, the positions at Utica have not been filled seven days a week either before or after September 1, 1949, except by special arrangement during World War II. Accordingly we cannot hold that this rule authorizes the proposed change from the present 5-day service to a 7-day operation.

* * * * *

The only remaining rule on which the asserted right could be based is 32 (c) which governs work on Sundays, and the Carrier's main reliance is on this rule. The particular portion of the rule relied upon states that 'a rigid adherence to the precise pattern that may have been in effect immediately prior to September 1, 1949 with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account.' But the immediately following sentence says: 'This is not to be taken to mean, however, that types of work which were not needed on Sundays prior to September 1, 1949 will thereafter be assigned on Sunday.' And there is more in the rule that shows why the right of employes not to work on Sunday, except at punitive rates, is carefully balanced against the right of the Carrier to work them at straight time rates.

* * * * *

Since the conditions were well known when Rule 32(c) or its equivalent on other carriers was written, the restrictions or extension of Sunday work would not have been put into the rule, if the intent was to permit changing from 5 and 6-day operations to 7-day operations because of general business conditions prevailing in the railroad industry as a whole. We think it is plain that the right claimed by the Carrier in this case, if upheld, would eliminate the right of the employes specified in the rule against reinstatement of Sunday work where it has been dispensed with. These rights were part of the bargain which eliminated the provisions for punitive rates for Sunday as such. Only renegotiation of the rule by the parties themselves can make such a change."

Carrier refused to be governed by the decision in Award 6695 and arbitrarily established seven-day operations at six freight transfer stations with straight time pay for Sunday work. The New York Central and the Clerks' Organization agreed to arbitrate the dispute. The Members of the arbitration Board were: Mr. David L. Cole, Chairman, representing the public, Mr. George M. Harrison, representing the Clerks and Mr. L. W. Horning, representing Carrier. The Award was rendered on June 4, 1956, and sustained the position of the Organization. A copy of the Award is included in the concurring Opinion of Labor Members to Third Division Award No. 7370, Docket No. CL-7512, starting on page 25 and ending on page 46 of the printed award.

This arbitration award reviews various awards of the Second and Third Divisions of the Board and the findings therein clearly sustain the interpretation the Employes have placed upon the 40-Hour Week Agreement here. Mr. Cole was also a Member of the Emergency Board that recommended the reduced work week. The author of Award 10253 clearly ignored these controlling precedents.

Third Division Award 7370, Referee Carter, covers an almost identical situation as that confronting us here. The Employes' claims are sustained, although Carter again goes far afield in his interpretation of the agreement by considering whether "Sunday work was necessary."

The clear and unambiguous provisions of the 40-Hour Week Agreement does not permit this railroad, or for that matter any other railroad that is a party to it, to establish 7-day operations at any time, unless such service was performed prior to September 1, 1949.

The work in dispute was not necessary to continuous operations prior to September 1, 1949, and the assignment thereafter on Sundays clearly violated Rules 37 (c-4) and 47 (a).

The author of this Award is guilty of the very thing that the Court admonished against in 44 Ohio Appeals 493, when it stated:

> "Constructive thinking is not wholly common in judicial opinions, for the reason that index learning has brought into convenient use thousands of precedents, and the first impulse in legal investigation is to 'find a case' * * * Cowper put the thought in cold type:
>
> > 'To follow foolish precedents and wink both eyes is easier than to think.' "

The author has clearly followed erroneous awards and thereby substituted a code of Board-made rules for the clearly expressed provisions of the negotiated agreement of the parties. See Award 4819.

For the reasons stated above, and those appearing in Labor Members' Concurring Opinion To Award No. 7370, Docket No. CL-7512, Award 10253 is clearly erroneous and I dissent thereto.

/s/ J. B. Haines

J. B. Haines
Labor Member

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S DISSENT TO AWARD NO. 10253, DOCKET NO. CL-9443

The dissent consists in the main of a restatement of the arguments previously advanced by the Organization and the dissenter, all of which were fully considered and found lacking by the majority.

Award 10253 is consistent with well-reasoned prior Awards of the National Railroad Adjustment Board that, in cases of this kind, have given determinative significance to whether the Sunday work involved was necessary. Those prior well-reasoned Awards were not erroneous, and the views now expressed by the dissenter to Award 10253 do not make them erroneous.

The dissenter has again called attention to the Opinion of the Majority of the Board of Arbitration in NMB Case No. 212, David L. Cole, Chairman, which was made a part of the "Concurring Opinion of Labor Members" to Third Division Award No. 7370. The Minority Opinion of the Board of Arbitration in NMB Case No. 212 is included in "Dissent to Concurring Opinion Filed by Labor Members in Award No. 7370, Docket No. CL-7512," starting on page 46 and ending on page 54 of printed Award No. 7370. The Minority Opinion amply sets forth the errors of the majority in the Arbitration Award, which Award has not been followed in subsequent well-reasoned Awards of the National Railroad Adjustment Board.

Award 10253 and the record on which it is based stand as the best refutation of the views of the dissenter. The Award is not erroneous. The author correctly analyzed the facts of record and properly found that the Agreement was not violated.

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ T. F. Strunck