

Award No. 10588

Docket No. SG-10043

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**BIRMINGHAM TERMINAL COMPANY -
CHATTANOOGA STATION COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Birmingham Terminal Company — Chattanooga Station Company that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement at the Birmingham Terminal when it bulletined and assigned a first shift Signal Maintainer, Assistant Signal Maintainer, and a Signal Helper (all five-day positions), with assigned hours of 7:00 A. M. to 3:00 P. M. to a work week of Tuesday through Saturday and rest days of Sunday and Monday.

This violation of the Signalmen's Agreement causes further violation of the agreement due to the fact that a regularly assigned second shift Signal Maintainer (a five-day position) with assigned hours of 3:00 P. M. to 11:00 P. M., work week of Monday through Friday and rest days of Saturday and Sunday, is permitted to work on a day (Monday) when there is no regularly assigned first shift working.

(b) The Carrier violated and continues to violate the current Signalmen's Agreement at the Chattanooga Station Company when it bulletined and assigned a second shift Signal Maintainer (a five-day position) with hours of 3:00 P. M. to 11:00 P. M. to a work week of Tuesday through Saturday and rest days of Sunday and Monday.

This violation of the Signalmen's Agreement causes a further violation of the agreement due to the fact that it permits a second shift Signal Maintainer to work on a day (Saturday) when there is no regularly assigned first shift working, and also permits a regularly assigned third shift Signal Maintainer (a five-day position) with hours of 11:00 P. M. to 7:00 A. M. and a work week of Monday through Friday and rest days of Saturday and Sunday, to work on a day (Monday) when there is no regularly assigned second shift working.

(c) The Carrier now be required to correct the above-cited violations in parts (a) and (b) of our claim by properly bulletining the

Signalmen's positions at the Birmingham Terminal and Chattanooga Station in accordance with the applicable provisions of the current Signalmen's Agreement.

EMPLOYES' STATEMENT OF FACTS: The following Signal Department positions at the Birmingham Terminal Company are presently assigned as follows:

Signal Maintainer — First Shift — Regular assigned hours 7:00 A. M. to 3:00 P. M. — work week Tuesday through Saturday — Rest days are Sunday and Monday, assignee, J. E. Channel.

Assistant Maintainer — First Shift — Regular assigned hours 7:00 A. M. to 3:00 P. M. — work week Tuesday through Saturday — Rest days are Sunday and Monday, assignee, L. B. Mills.

Signal Helper — First Shift — Regular assigned hours 7:00 A. M. to 3:00 P. M. — work week Tuesday through Saturday — Rest days are Sunday and Monday, assignee, F. G. Homan.

Signal Maintainer — Second Shift — Regular assigned hours 3:00 P. M. to 11:00 P. M. — work week Monday through Friday — Rest days are Saturday and Sunday, assignee, J. J. Blankenship.

There are no third shift positions assigned at the Birmingham Terminal Company.

The following Signal Department positions at the Chattanooga Station Company are presently assigned as follows:

Leading Signal Maintainer — First Shift — Regular assigned hours 7:00 A. M. to 3:00 P. M. — work week Monday through Friday — Rest days are Saturday and Sunday, assignee, A. S. Pell.

Assistant Signal Maintainer — First Shift — Regular assigned hours 7:00 A. M. to 3:00 P. M. — work week Monday through Friday — Rest days are Saturday and Sunday, assignee, C. H. Waller.

Signal Maintainer — Second Shift — Regular assigned hours 3:00 P. M. to 11:00 P. M. — work week Tuesday through Saturday — Rest days are Sunday and Monday, assignee, R. L. Waller.

Signal Maintainer — Third Shift — Regular assigned hours 11:00 P. M. to 7:00 P. M. — work week Monday through Friday — Rest days are Saturday and Sunday, assignee, M. T. Payne.

General Chairman E. C. Melton had attempted for some time prior to and subsequent to November 1, 1955, to have the Carrier properly bulletin the first shift positions at the Birmingham Terminal to a work week of Monday through Friday and rest days of Saturday and Sunday in accordance with the provisions of the Signalmen's Agreement. Likewise, he also attempted to have the Carrier properly bulletin the second shift Signal Maintainer at the Chattanooga Station to a work week of Monday through Friday and rest days of Saturday and Sunday in accordance with the provisions of the Signalmen's Agreement.

and it is controlled by Rule 9 (b). This is so even though all assignments made are only for five days, for the reason that the length of an employe's assignment under the 40 Hour Work Week Agreement has no relation to the question whether a position is one of five, six, or seven days. The fact is that they are all five day assignments; six and seven day assignments no longer exist."

See also Third Division Awards Nos. 5556, 5557, 6946, 6947, 6948 and others.

Thus, while the Brotherhood has heretofore conceded the point here at issue, it has also been denied by many prior Board Awards.

CONCLUSION

Respondents submit that:

(a) Claim is barred because of not having been presented within 60 days from the date of the occurrence on which it is based and was not handled as required by Agreement rules or timely handled as contemplated by the Railway Labor Act. Furthermore, the Brotherhood has by its action conceded the point here at issue.

(b) Positions occupied by all signal forces at Birmingham and Chattanooga are "six day positions" within the meaning of Rule 22. Therefore, the referred to signal forces at Birmingham and Chattanooga are properly assigned Tuesday through Saturday with consecutive rest days of Sunday and Monday.

(c) Prior Awards of the Board involving the same issue here presented have denied claims of the type which the Brotherhood here attempts to assert.

Claim being barred, should be dismissed by the Board for want of jurisdiction. However, in event, despite this fact, the Board assumes jurisdiction, it cannot do other than make a denial award.

All evidence here presented in support of Respondents' position is known to employe representatives.

Respondents not having seen the Brotherhood's submission, reserve the right after doing so to make appropriate response thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant alleges that the positions of Signal Maintainer, Assistant Signal Maintainer and Signal Helper on the first shift at Birmingham, Alabama, and the position of Signal Maintainer on the second shift at Chattanooga, Tennessee, are "five day positions" within the meaning of the staggered forty-hour work rules, and that the rest days of these positions should be Saturday-Sunday.

On the other hand, it is the Carrier's contention that these are "six day positions" under the forty-hour work week rules which became effective September 1, 1949; that it was proper to stagger the work weeks of these positions with rest days of Saturday-Sunday and Sunday-Monday, and that the work days and rest days of these positions were properly assigned when the forty-hour work week was established on September 1, 1949.

The Carrier, further, contends that the claim is barred under the provisions of Article V of the Agreement of August 21, 1954. The Employees have shown and the Carrier has not denied that such an issue was not handled on the property. This Board has consistently ruled that it will not consider issues that have not been treated in the handling of a claim on the property. (See Award 9578-Johnson; Award 10075-Weston)

This brings us then to a consideration of the claim on the merits. Rule 22(b) of the Agreement is, as follows:

“(b) The expressions ‘positions’ and ‘work’ when used in this agreement refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.”

Rule 22(c) among other things provides “that the work weeks may be staggered in accordance with the Carrier’s operational requirements”, and further provides: “2. **Six Day Positions** — where the nature of the work is such that employees will be needed six days each week, the rest days will be Saturday and Sunday or Sunday and Monday”.

It is the duty of the Carrier to operate a railroad in such a manner as to provide efficient, economical and satisfactory service to the shipping and travelling public. To conduct such an operation, the Carrier contends that a six day maintenance service is required on the territory assigned. Claimant must do something more than merely assert that the duties of Employee’s positions could be met in five days. Claimants have the positive burden of proving that they could. They have failed to do so and, consequently this Board has no other alternative than to hold that these are “Six Day Positions”. (See Award 5545-Elson; Award 5555-Carter; Award 5557-Carter)

It is the Claimant’s further and final contention that there has been a violation of Rule 20 of the Agreement; that on Mondays at Birmingham and on Saturdays at Chattanooga only one shift is worked and that Rule 20(a) provides that — “The starting time of the work period of all employees, when one shift is worked, shall be established between the hours of 6:00 and 8:00 A. M.”; that at Chattanooga two shifts are worked on Mondays. The finishing time of the first shift work is 3:00 P. M. and the starting time of the second shift work is 11:00 P. M. Rule 20(a) provides; “when two shifts are worked, the starting time of the first shift shall be between the hours named above and the starting time of the second shift shall be between the finishing time of the first shift and not later than 4:00 P. M. provided a second shift may be started at 10:00 P. M.”

What the Claimant in effect is urging is: Even though these were “Six Day Positions”, when there is a second shift, there must also be a first shift; that on days when there is a first shift, there must also be a second shift. In prior Awards involving the “Six Day Positions” no reference has been made whatever to shifts. Rule 22 (b) defines the distinction between “positions” and “work”. When the forty-hour, five-day work week was provided for in September, 1949, staggering work weeks was intended as a device to reduce expense to the Carrier at converting from a six-day to a five-day week. Carrier in this instance found it necessary to operate these positions six days. None of the employees involved here work more than forty hours and all of them are qualified to perform the work to which they are assigned.

Rule 20 cannot take precedence over Rule 22; both rules have to be considered as a whole and determined practically and realistically as they were intended to be applied. Any other interpretation would make the provision in Rule 22 for "Six Day Positions" with staggered work weeks entirely ineffective for the purpose that was intended.

We are led to the conclusion for the foregoing reason that there has been no violation of 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 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 there has been no violation of 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 4th day of May 1962.

LABOR MEMBER'S DISSENT TO AWARD 10588 — DOCKET SG-10043 —

It must first be noted that the only reason the majority advanced for its holding that the positions in question were six day instead of five day positions was the petitioner's failure (in the opinion of the majority) to prove otherwise.

Assuming, without conceding, that the majority is correct, their award, allowing this carrier to stagger shifts, is not in keeping with the awards they cite in support of their statement. The majority admits that "In prior awards involving the 'six day positions' no reference has been made whatever to shifts." The awards cited by the majority involve a staggering of the work-weeks of employees on the same (first) shift, not a staggering of shifts. This also demonstrates the error in the majority's statement that "Any other interpretation would make the provisions of Rule 22 for 'six day positions' with staggered work weeks entirely ineffective for the purpose that was intended." What the majority has done is to make Rule 20 completely ineffective for the purpose that was intended. Instead of reducing confusion, the majority has created more.

The majority's lack of understanding of the issues in the claim is strikingly demonstrated by its statement that, "What the claimant in effect is urging is: Even though these were 'Six Day Positions', when there is a second shift,

there must also be a first shift; **that on days when there is a first shift, there must also be a second shift.**"* A search of the record will show that at no time did the petitioner make any claim such as contained in the underscored portion of their statement. On page 62 of the record the petitioner stated: "The first sentence of Rule 20 gives the carrier the privilege of employing just one shift on any one day provided that the starting time is established between the hours of 6:00 A.M. and 8:00 A.M." The majority's lack of understanding of the issues demonstrates the absurdity of the award.

The award is in error and should be so recognized; therefore, I dissent.

/s/ W. W. Altus
W. W. Altus

* Emphasis ours.