

Award No. 11474
Docket No. TE-10244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. The Carrier violated the agreement between the parties when in changing the rest days of several employes it suspended them from work on work days of their positions as follows:

Kruse Davis, Agent-Telegrapher, Coolidge, Arizona on October 21, 1956;

W. H. Storts, Towerman, River Station, Los Angeles, California, on January 23 and 24, 1957;

W. T. Jones, Jr., Telegrapher-Clerk-Towerman, Wellton, Arizona on March 14, 1957;

J. C. Mann, Telegrapher-Clerk, "FD" Phoenix, Arizona on March 26, 1957; and

J. F. Wells, Telegrapher-Clerk, "FD" Phoenix, Arizona on March 26 and 27, 1957.

2. Carrier shall now compensate claimants for an additional day's pay at the straight time rate on each of the dates suspended.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

KRUSE DAVIS

Claimant Davis was assigned to the position of Agent-Telegrapher at Coolidge, Arizona, assigned hours 8:00 A.M. to 4:00 P.M., a seven-day position.

Since all dates here involved were duly assigned rest days of the respective claimants, it is obvious that the suspension of work during regular hours to absorb overtime is not involved.

In contrast to the rules quoted and discussed above and upon which petitioner is relying in this case, attention is directed to Section (a) of the Rest Days rule—Rule 7—of the current agreement, reading:

“Section (a).

Rest days shall be assigned and shall be the same days of each week, but may be changed to meet service requirements by ‘giving ninety-six (96) hours’ written notice to the employees affected.”
(Emphasis ours.)

By the clear provisions of that rule the only restriction affecting carrier in the matter of changing of rest days is that employees affected thereby will be given 96 hours’ written notice of such change. In each of the cases here involved that has been done and there is no dispute in this Docket with respect to that fact. Furthermore, it will be noted that, neither this nor any other rule of the agreement requires a change in work week whenever there is a change in rest days.

CONCLUSION

Clearly the facts, rules, intent of such rules and established practice sustain carrier’s position in this docket, and claim should be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier’s initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Order of Railroad Telegraphers and Southern Pacific Company.

Claimant Kruse Davis was assigned the position of Agent-Telegrapher at Coolidge, Arizona, assigned hours 8:00 A.M. to 4:00 P.M., a seven-day position.

Prior to the time a change was made in his rest days, his workweek was as follows:

Sunday, Monday, Tuesday, Wednesday and Thursday—workdays;

Friday and Saturday—rest days.

On October 15, 1956, Claimant was advised by the Carrier:

"Effective 12:01 A.M. October 20th, 1956, your regular relief days will be Saturday and Sunday."

This resulted in a new work week as follows:

Monday, Tuesday, Wednesday, Thursday and Friday—work days;

Saturday and Sunday—rest days.

On Sunday, October 14, 1956, Davis began a work week, this work week was as follows:

Sunday, October 14 — worked

Monday, October 15 — worked

Tuesday, October 16 — worked

Wednesday, October 17 — worked

Thursday, October 18 — worked

Friday, October 19 — rest day

Saturday, October 20 — rest day

This completed the work week beginning on October 14. He was not permitted to work on Sunday, October 21. Carrier contended that this was a rest day of his new work week; Employees contend that a work week cannot start with a rest day.

Claimant W. H. Storts was assigned to the position of 3rd Towerman, Los Angeles River Station, Los Angeles, California, with assigned hours 12 Mid-night to 8:00 A.M., a seven-day position.

Prior to the time a change was made in his rest days, his work week was as follows:

Monday, Tuesday, Wednesday, Thursday and Friday—work days;

Saturday and Sunday—rest days.

On January 18, 1957, Claimant was advised by the Carrier:

"Effective January 23, 1957, your regular relief days will be Wednesday and Thursday."

This resulted in a new work week as follows:

Friday, Saturday, Sunday, Monday and Tuesday—work days;

Wednesday and Thursday—rest days.

On Monday, January 21, Claimant began a work week. He worked on Monday, January 21, and Tuesday, January 22, but was not permitted to complete the work week as he was idled on Wednesday, January 23, and Thurs-

day, January 24. Carrier contended these were the rest days of his new work week; employees contend that a work week cannot start with a rest day.

Claimant W. T. Jones, Jr., was assigned to the position of 3rd Telegrapher-Clerk-Towerman at Wellton, Arizona, assigned hours 12 Midnight to 8:00 A. M., a seven-day position.

Prior to the time a change was made in his rest days, his work week was as follows:

Sunday, Monday, Tuesday, Wednesday and Thursday—work days;

Friday and Saturday—rest days.

On March 9, 1957, Claimant was advised by the Carrier:

“Effective March 13, 1957, your regular relief days will be Thursday and Friday.”

This resulted in a new work week as follows:

Saturday, Sunday, Monday, Tuesday and Wednesday—work days;

Thursday and Friday—rest days.

On Sunday, March 10, Claimant began a work week. He worked on Sunday, March 10, Monday, March 11, Tuesday, March 12, Wednesday, March 13, but was not permitted to complete the work week as he was idled on Thursday, March 14. Carrier contended that this was a rest day of his new work week; employees contend that a work week cannot start with a rest day.

Claimant, J. C. Mann, was assigned to the position of 1st Telegrapher-Clerk at “FD” Phoenix, Arizona, assigned hours 8:00 A. M. to 4:00 P. M., a seven-day position.

Prior to the time a change was made in his rest days, his work week was as follows:

Tuesday, Wednesday, Thursday, Friday and Saturday—work days;

Sunday and Monday—rest days.

On March 21, 1957, Claimant was advised by the Carrier:

“Effective March 26, 1957, your regular relief days will be Monday and Tuesday.”

This resulted in a new work week as follows:

Wednesday, Thursday, Friday, Saturday and Sunday—work days;

Monday and Tuesday—rest days.

On Tuesday, March 19, Claimant began a work week. He worked on Tuesday, March 19, Wednesday, March 20, Thursday, March 21, Friday, March 22, Saturday, March 23; rest days Sunday, March 24 and Monday, March 25. He was not permitted to work on Tuesday, March 26. Carrier contended that

this was a rest day of his new work week; employees contend that a work week cannot start with a day of rest.

Claimant, J. F. Wells was assigned to the position of 2nd Telegrapher-Clerk at "FD" Phoenix, Arizona, with assigned hours 4:00 P.M. to 12 Mid-night, a seven-day position.

Prior to the time a change was made in his rest days, his work week was as follows:

Tuesday, Wednesday, Thursday, Friday and Saturday—work days;
Sunday and Monday rest days.

On March 21, 1957, Claimant was advised by the Carrier:

"Effective March 26, 1957, your regular relief days will be Tuesday and Wednesday."

This resulted in a new work week as follows:

Thursday, Friday, Saturday, Sunday and Monday—work days;
Tuesday and Wednesday—rest days.

On March 19, 1957, Claimant began a work week. He worked on Tuesday, March 19, Wednesday, March 20, Thursday, March 21, Friday, March 22, Saturday, March 23; he observed the rest days Sunday, March 24 and Monday, March 25, which completed the work week. He was not permitted to work on Tuesday, March 26 and Wednesday, March 27. Carrier contended these were rest days of his new work week; employees contend that a work week cannot start with a rest day.

In Award 5129 a similar set of circumstances existed. In that award the Board ruled:

"The Carrier contends, however, that it had the right, on 72 hours' written notice to the employee affected, when service needs required, to change the assigned rest day without penalty. We are unable to agree. The rules in effect at the time (we pass no opinion on present rules) contemplated only one rest day in seven without compensation where a holiday did not intervene. On notice from the Carrier, the assigned rest day from that time forward became Saturday instead of Monday, subject to further change on due notice. The purpose of the notice was served when the employee was advised that his rest day henceforth was Saturday and he no longer had claim to Monday as an assigned rest day.

"On the other hand, this Division of the Board has consistently held, where applicable guarantee rules were in effect, that the employee is entitled to be compensated for work which the Carrier causes him to lose due to changing his rest days. See Award 5066. While the cited award construes the rules of another agreement, the principle is the same. In that case, as here, it was argued that, in view of a rule providing for change of relief days when necessary. It is 'inconceivable that action presented under one rule would be subject to penalty under another rule of the same agreement.' If we were to

sustain that argument in this case, and other contentions of the Carrier, we would be acting counter to valid Board precedent and, in our opinion, would be giving greater effect to the notice provisions of March 1, 1945, agreement than permitted by the 'guarantee' rule of the December 1934 agreement, as amended, after due consideration is given to paragraph (h), Section 1, Article 1, of the amendatory agreement."

This award has been followed in the following Awards: 6519, 7324, 8103, 8144, 8868, 10289, 10517, 10875 and 10908.

We do not see sufficient reason to depart from the holding expressed in the foregoing opinions. For that reason we find that the Agreement was violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11474, DOCKET TE-10244

Award 11474 is palpably wrong.

The controlling agreement contains no weekly guarantee, and the daily guarantee rule expressly provides there shall be no guarantee for properly designated rest days. Other provisions in the agreement explicitly provide procedures for designating rest days, and admittedly Carrier had complied fully with those clear provisions in designating the days involved in this claim as rest days. It is elementary that additional restrictions upon designating rest days which are not found in the agreement cannot be imposed by this Board. It is thus apparent on the face of the record that claimants were in error in claiming that the involved dates were "workdays," and no valid reason can be given for sustaining their claim.

The basis given for sustaining the claim is the patently erroneous conclusion that a "similar set of circumstances existed" in Award 5129 where the Board sustained the claim. The circumstance that was expressly held controlling by the Board in Award 5129 was the fact that the guarantee provisions of the controlling agreement in that case explicitly prohibited the carrier from assigning the claimant more than one rest day in "any consecutive period of seven (7) days." There is no such guarantee provision in the controlling agreement in Award 11474; hence, the reason given by the Board for sustaining the claim in Award 5129 does not exist in Award 11474. Award 5129 applied the basic rule that this Board's powers are limited to interpreting existing Agreements and we cannot properly disregard agreement provisions which the parties have adopted. Under that same basic rule, Award 11474 should have denied the claim therein.

In setting out the facts, Award 11474 makes repeated references to a new "workweek" of each claimant. Since there are no provisions in the controlling agreement creating a weekly guarantee, the creation of a new workweek commencing on a different day of the calendar week would not be material to this claim in any event; but, we feel constrained to point out that carrier's consistent position throughout the record has been that the change in the rest days of each of the claimants did not bring about any change in any workweek; hence, there was no new "workweek." Carrier's position in this regard had already been sustained by this Board in Award 6211 wherein the creation of a new workweek was of controlling significance because the agreement of the clerks which was there in evidence contained a weekly guarantee.

We dissent.

G. L. Naylor

W. M. Roberts

R. E. Black

R. A. DeRossett

W. F. Euker