

Award No. 11991
Docket No. TE-10693

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway that:

1. Carrier violated the agreement between the parties when in changing rest days it required W. J. Cox to work on August 16, 1957, 6th day of his work week, in excess of five days or forty hours at the straight time rate and to suspend work on August 18, 1957 a work day of his work week.

2. Carrier shall compensate W. J. Cox in the amount of the difference between eight hours at straight time and eight hours at time and one-half on August 16, 1957 and one day's pay (8 hours) at the pro rata rate on August 18, 1957.

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

Because of a reduction in force at Commerce, Texas, the Carrier changed the rest days of several positions at this station including the first shift telegrapher. W. J. Cox was the regularly assigned incumbent of this position.

The Carrier issued the following notice concerning the change in rest days:

"TELEGRAM

Tyler, Texas — August 12, 1957

438 - Commerce
- Sulphur Springs

CLT . . . WFM . . . W A Stephenson . . . W J Cox . . . B F Ross . . .
W J Wright . . . Sara Smith - Commerce . . . C Black . . . J B Elliott
W A McDowell . . . L D Altenbaumer - Sulphur Springs

the rest days for the incumbent thereof were programmed for Saturday and Sunday instead of for Friday and Saturday as per the former routine, the rest day of Sunday, November 13, became chargeable to the succeeding work week of which Monday, November 14, was the first day on which the assignment was bulletined to work. Thus, it cannot be said that the change in rest days had the effect of subjecting claimant to take three consecutive days off in a single work week."

Award 20 of Special Board 173 denied claim of a clerk for time and one-half rate on the basis that he worked six days in a work week as result of a change in rest days. The Findings, in part:

"Taking cognizance of the meaning which Rule 41(i) of the May 1, 1955 Agreement places on the term 'work week', it follows that claimant began working in a new work week on Thursday, November 10, 1955, pursuant to the terms of the newly inaugurated work schedule. Thus, Sunday, November 13, 1955, was, in fact, the fifth work day of the revised Wednesday to Sunday work week, and not, as here alleged, the sixth work day of the previous work week which had started on Tuesday, November 8, 1955. In that claimant did not work in excess of five days in the scheduled work week effective November 10, 1955, this claim is without merit."

Thus the Boards have held in a number of awards that a Carrier is not limited as to when it may make effective a change in assigned rest days, in the absence of a rule in the agreement limiting a Carrier in this respect. The absence of such a provision leaves the Carrier free to make the change at such time as conditions warrant, since it is well recognized that except insofar as it has limited itself by agreement all rights of management remain with the Carrier (Award 7296, Referee Carter). There being no limitations or restrictions in the Agreement as to when a change in rest days can be made effective, such determination was and is a prerogative of the Carrier.

V

In conclusion the Carrier respectfully submits that the claim of the Employees clearly is without merit or support under the rules of the current Agreement and should be denied.

All data herein has been presented to representatives of the Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: As a result of Carrier's change in rest days Claimant W. J. Cox worked six consecutive days from Sunday, August 11, 1957, through Friday, the 16th, was off duty two days, Saturday and Sunday, the 17th and 18th, then worked the five work days of the changed work week beginning on Monday, the 19th.

The claim is that Cox should be paid the difference between straight time, which was paid, and the premium rate of time and one-half for work on August 16, the sixth consecutive day of work that week; also that he be paid a day's pay for Sunday, the 18th, because it was allegedly not a proper rest day but was a work day of Claimant's assignment.

The latter claim presents the same issue as that in Award 11990, this day decided. As in that case, Awards 10517 and 10875 are controlling.

The claim for August 16th presents an issue which has been the subject of numerous awards of this Board: 7319, 8145, 9962, 10497, 10530, 10674, 10744, 10901, 11036, 11322, 11549, among others. It appears to be well settled by these awards that a carrier's right to change rest days does not operate as an exception to the overtime rule. See, especially Award 9962. This claim, therefore, must also be sustained.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.