

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4877) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 4-A-1 (i), 4-C-1 and 5-E-1, when it required Mr. A. Furie, incumbent of a regular five day position of Store Attendant at the Storehouse, Toledo, Ohio, Lake Region, to work on his Saturday and Sunday rest days and suspend work on each Monday and Tuesday, in order to avoid the payment of overtime.

(b) Claimant Furie should be allowed eight hours pay a day at the punitive rate of pay, as a penalty, for each Monday and Tuesday on which he was required to suspend work subsequent to February 18, 1959, and continuing until the violation is corrected.

(c) Claimant Furie should be allowed the difference between the pro rata and the punitive rate of pay of a Store Attendant for each Saturday and Sunday he was required to work at the pro rata rate of pay subsequent to February 18, 1959, and continuing until the violation is corrected. (Docket 652.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant, in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The Joint Statement of Agreed Upon Facts contained in the Joint Submission of the parties in this dispute reads as follows:

"Claimant A. Furie held position of Store Attendant, 1st trick, Toledo Stores Department, with Saturday and Sunday rest days.

Prior to January 2, 1959, the two Store Attendants on 1st trick at Toledo Stores Department had Saturday and Sunday rest days.

When the repair program at Toledo Car Shop was changed from a five day operation to a seven day operation, the rest days of claimant A. Furie were changed effective Friday, January 2, 1959, to Monday and Tuesday."

The claim arises out of Carrier's rearrangement of the work assignment of the Claimant because of a new work program at the Toledo Car Shop which increased the use of Storehouse facilities to the extent that a Storehouse Attendant was required seven days a week. Claimant's assignment was changed to a work week from Wednesday through Sunday with rest days on Monday and Tuesday. None of the rest days for either Store Attendant position were filled by the assignment of a Relief Store Attendant, and the incumbents were not assigned to work on their rest days.

Petitioner contends that the Carrier violated the effective Rules Agreement between the parties, particularly Rules 4-A-1 (i), 4-C-1 and 5-E-1 which are as follows:

"RULE 4-A-1 (i)

(Effective September 1, 1949.)

Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"RULE 4-C-1

Employees will not be required to suspend work during regular hours to absorb overtime."

"RULE 5-E-1

(Effective September 1, 1949.)

NOTE: The expressions 'positions' and 'work' used in this rule (5-E-1) 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.

(a) (Effective September 1, 1949.)

The Company will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of forty hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Company's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of the Chicago Agreement of March 19, 1949.

(b) (Effective September 1, 1949.)

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

(c) (Effective September 1, 1949.)

Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday, or Sunday and Monday.

(d) (Effective September 1, 1949.)

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

(e) (Effective September 1, 1949.)

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day service, or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this Agreement.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving.

(f) (Effective September 1, 1949.)

If in positions or work extending over a period of five days per week, an operational problem arises which the Management contends cannot be met under the provisions of paragraph (b) of this rule (5-E-1) above, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if the Management nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the applicable provisions of this Agreement.

(g) (Effective September 1, 1949.)

The typical work week is to be one with two consecutive days off, and it is Management's obligation to grant this. Therefore, when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by paragraphs (c), (d), and (e) of this rule (5-E-1), the following procedure shall be used:

(1) All possible regular relief positions shall be established pursuant to paragraph (e) of this rule (5-E-1).

(2) Possible use of rest days other than Saturday and Sunday, by agreement between the Management and the Division Chairman, subject to approval of the General Chairman, or in accordance with other provisions of this Agreement.

(3) Possible accumulation of rest time and the granting of longer consecutive rest periods by agreement between the Management and the Division Chairman, subject to the approval of the General Chairman.

(4) Other suitable or practicable plans which may be suggested by either of the parties shall be considered and efforts made to come to an agreement thereon.

(5) If the foregoing does not solve the problem, then some of the relief or extra men may be given non-consecutive rest days.

(6) If after all the foregoing has been done there still remains service which can only be performed by requiring employees to work in excess of five days per week, the number of regular assignments necessary to avoid this may be made with two non-consecutive days off.

(7) The least desirable solution of the problem would be to work some regular employees on the sixth or seventh days at overtime rates and thus withhold work from additional relief men.

(8) If the parties signatory to this Agreement are in disagreement over the necessity of splitting the rest days on any such assignments, the Management may nevertheless put the assignments into effect subject to the right of employees to process the dispute as a grievance or claim under the rules agreement, and in such proceedings the burden will be on the Management to prove that its operational

requirements would be impaired if it did not split the rest days in question and that this could be avoided only by working certain employees in excess of five days per week.

(h) (Effective September 1, 1949.)

To the extent extra or furloughed men may be utilized under this Agreement, their days off need not be consecutive; however, if they take the assignment of a regular employee, they will have as their days off the regular days off of that assignment.

(i) (Effective September 1, 1949.)

The term "work week" for regularly assigned employees shall mean a week beginning on the first days on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

The thrust of the Petitioner's argument is that the Carrier is required to assign the rest day work of seven day positions to regular relief employees, or in their absence to the regular incumbents on an overtime basis and that Carrier's failure to do so resulted in the alleged violation of the Agreement.

Carrier denies any violation of the effective Rules Agreement between the parties and contends that it properly changed the Storehouse operation at Toledo from a five day to a seven day operation by staggering the work weeks of the incumbent employees without the need of relief employees.

Rule designated as Item "H" (effective September 1, 1949) of Supplemental Agreement "A" authorized the Carrier to establish a seven day Storehouse operation and also provides in the last paragraph as follows:

"Nothing in this provision shall be construed to require the Management to establish seven-day-a-week positions."

Rule 5-E-1 is derived from the National Agreement of March 19, 1949, effective September 1, 1949, which is commonly known as the Forty Hour Agreement. The "NOTE" which precedes this part of the rule clearly defines the expressions "positions" and "work" which have been used interchangeably by the parties herein to connote both the operations of the Storehouse and the number of days an employee actually works. It reads as follows:

"NOTE: The expressions 'positions' and 'work' used in this rule (5-E-1) 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."
(Emphasis ours.)

There is no disagreement in the present case concerning the operational requirements of the Carrier and particularly the need for at least one Storehouse Attendant on duty each day of the week. The present work weeks of the Storehouse Attendants continue to be of five days' duration but are staggered so that at least one employee is on duty seven days a week. There is no requirement in the applicable sections of Rule 5-E-1 that Saturday and Sunday must be rest days when it is found necessary to stagger work weeks to meet operational requirements. Obviously in this case, the Carrier could not have both employees off on Saturday and Sunday and meet its requirements.

Petitioner offers no proof in support of assertions that there is sufficient work for two Storehouse Attendants on Mondays and Tuesdays at this location and that it had been the past practice to include either the Saturday or the Monday rest days of six day positions and both rest days of seven day positions in the assignment of regular relief positions over the Carrier's entire System. Both of these allegations are denied by Carrier and are hereby rejected in accordance with prior Awards of this Board, Awards 11834, 11645, 11280 and others.

The work involved in the present dispute must be performed seven days a week and therefore is a seven day position even though the work assignments are only for five days each. Award 5555. Under the rules quoted herein the assignment of relief employees is not a condition precedent to the establishment of seven day positions. Here, all the work was efficiently performed by staggering the regularly assigned employees. No provisions of the applicable rules requires the assignment of relief as the Carrier procured the performance of all necessary work by regularly assigned employees of the same class and within the same seniority district. Awards 5555, 6023, 6075, 6184 and 6946. Thus, we find no violation of Rule 5-E-1.

Rule 4-A-1 (i) of the Agreement is not applicable to this dispute as it pertains to work to be performed on a day which is not part of any assignment. The Storehouse operation is a seven day position and therefore there are no unassigned days.

Rule 4-C-1 was not violated by the Carrier in that no employee was required to suspend work during his regular hours to absorb overtime through the rearrangement of working schedules.

In view of the foregoing, we shall deny the claim.

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 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 23rd day of July 1964.