

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. The Carrier violated the Agreement between the parties when it suspended Mr. A. E. Buck from his position of first shift telegrapher-clerk at Grand Rapids, Michigan on October 23 and 24, 1960, for the purpose of changing his rest days from Friday and Saturday to Sunday and Monday.

2. The Carrier shall now be required to compensate Mr. Buck for eight (8) hours at his straight time rate for each of the days suspended.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, which by reference is hereby made a part of this submission, provides the following:

"RULE 6.

(a) The Carrier will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in this Rule 6, a work week of forty (40) 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 Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. * * *

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

The Referee in Award No. 6519 held that the new work week of the claimant involved therein, commenced with two rest days. In subsequent Awards dealing with the same subject (Awards Nos. 7324, 8103, 8144 and 8868) the Board held that the provisions of the "Beginning Of Work Week" Rule would not permit the rest days to precede the work days and that under such circumstances the first two new rest days preceding the new work days must be counted as days of the old work week. These latter awards were all sustaining awards, and again the basis for sustaining penalty payments was the existence of a guarantee rule in the Working Agreements involved in those disputes.

Since these latter Awards have gone further in interpreting the rules involved in the instant case, and have revised the principle laid down in Award No. 6519, these latter Awards only should be considered as applicable to the instant claim. Under the interpretations rendered in Awards 7324, 8103, 8144 and 8868, the claim dates involved in the instant case fell into the claimant's old work week. In other words, October 23 and 24, 1960, were not the first two days of the claimant's new work week, as alleged by the employes, but were instead days belonging to the claimant's old work week. Therefore, the claimant's new work week commenced on October 25th, and no violation of Rule 6 (i) of the Agreement has occurred. Insofar as the claimant's right to work October 23 and 24, 1960 was concerned, such days constituted time lost by the claimant as the result of the discontinuance of certain assignments and the rearrangement of others (changes in work days, shifts and rest days) and in the absence of a guarantee rule providing that employes covered by the Telegraphers' Working Agreement will work any specific number of days in a work week, the instant claim because he did not work on those dates must fail.

The instant claim is not supported by the Working Agreement and should be denied for the following reasons:

1. By virtue of the Third Division's holdings in previous Awards (Nos. 7324, 8103, 8144 and 8868) October 23rd, Sunday, and October 24th, Monday, could not be considered as rest days of the claimant's new assignment and no violation of Rule 6 (i) has occurred.
2. There is no guarantee rule contained in the current Telegraphers' Working Agreement and the instant claim account not working on October 23rd and 24th, 1960, is therefore without merit.

OPINION OF BOARD: Prior to Sunday, October 23, 1960, Claimant was a regularly assigned employe on the first shift operator-clerks position Plainfield Tower, Grand Rapids, Michigan, with work week Sunday thru Thursday, rest days of Friday and Saturday. The Claimant was notified on October 17, 1960, that, "Effective October 23, 1960, the rest days of first Opr. Clerk Grand Rapids will be Sunday and Monday." Claimant worked the week of October 16 thru October 20, 1960. Claimant observed the rest days of the work week, Friday and Saturday, and the new rest days of the changed assignment, being Sunday and Monday. Petitioner contends that Claimant is improperly suspended from his assignment on Sunday and Monday and Carrier should be required to compensate Claimant for eight (8) hours at his straight time rate for each of the days suspended. Employes contend that a new work week involved took place on the first day on which the new assignment was bulletined to work which was Tuesday, October 25, 1960,

therefore, the first two new rest days preceding the new workdays must be counted as days of the old work week.

Carrier supports its position with Rule 6, paragraph (k), in changing rest days, in that proper notice was furnished, to comply with this Rule, therefore no violation of the Agreement.

"RULE 6. REST DAY TO BE ASSIGNED

(k) The rest days of each regular assignment including regular relief assignments shall be designated and shall be the same days of each week, but may be changed to meet service requirements by giving not less than seventy-two (72) hours' written notice to the employees affected."

Employees contend that the rest days of the Claimant's new assignment, being Sundays and Mondays, a violation of Rule 6, paragraph (i) of the Agreement, as a result of the new work week commencing with the rest days. See Award 6519.

"RULE 6. BEGINNING OF WORK WEEK

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

The Board finds that Award 10755 (McGrath) is controlling in the instant case, as the facts are analogous:

"The Carrier asserts that the Agreement contains no guarantee of any number of days of work per week and that the Carrier followed all of the provisions of the Agreement in changing the work weeks of the two Claimants. The Carrier's specific claim that there is no guarantee in the Agreement before us as may be found in some Telegraphers' Agreement or a weekly guarantee as may be found in other agreements, and that it was not the intention of the parties to the Agreement under consideration to create a weekly guarantee of five days."

The Board can only interpret the Contract provisions of the Parties in the instant case and find that the Carrier followed all of the provisions of the Agreement in changing the work week of the Claimant in compliance with Rule 6 (k) and did not violate Rule 6 (i). There are no rules in the Agreement guaranteeing that the five workdays be consecutive nor a guarantee that employees will be paid so many days each week.

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 28th day of May 1965.