Award No. 13660
Docket No. TE-12571

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel Kornblum, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement between the parties when it changed the assigned rest days of T. G. Rish, A. B. Taylor and R. J. Rawl, Hamburg, South Carolina, and permitted each named employe to work only four days in his work week, for T. G. Rish beginning Monday, January 25, 1960, for R. J. Rawl beginning Wednesday, January 27, 1960 and for A. B. Taylor beginning Friday, January 29, 1960.

2. Carrier shall now compensate Claimants T. G. Rish, A. B. Taylor and R. J. Rawl for one additional day at the straight time rate of pay because being deprived of this work.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties with rates effective September 1, 1949, and rules revised as of September 1, 1949. By this reference, this Agreement is in evidence.

At Hamburg Yard, Hamburg, South Carolina, before January 28, 1960, the Carrier had two negotiated positions and a relief position covering the rest days of the two positions.

Before this date, the first shift position was owned and held by T. G. Rish. His assigned work week began on Monday, with the assigned rest days of Saturday and Sunday. The second shift position began on Wednesday, with assigned rest days of Monday and Tuesday. The second shift position was owned by Mr. R. J. Rawl. The relief assignment covering the first and second shift positions was held by Mr. A. B. Taylor. His assigned work week began on Friday. His assignments during the work week were as follows: Friday, third shift position, Andrews Yard; Saturday and Sunday, first shift position, Hamburg Yard; Monday and Tuesday, second shift position, Hamburg Yard; assigned rest days, Wednesday and Thursday.

Rule 4 (k), met all other applicable provisions and requirements of the agreement with respect to regular positions and relief assignments, and that claimants did not lose a day's work.

Carrier has shown that there was no violation of the agreement and, for the reasons stated, respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This is another of the now familiar disputes involving claims resulting from changes made in assigned rest days. In the instant case claim is made for one day's pay for each of three Claimants on the ground that in the transition to their respective rearranged work weeks they each lost a day and are entitled to pay therefor under the Guarantee Rule (Rule 6). In a companion case involving the same parties, Award 13661, the claim, also resulting from a change in rest days, takes the form of a request for payment of the difference between straight-time rate and time and one-half rate for two days on the ground that in the transition to the new work week the Claimant was required to work seven consecutive days while being compensated at straight-time rate, including the sixth and seventh days.

In light of the many decisions by this Board on this issue, and particularly those rendered since Awards No. 7319 (Carter) and 7324 (Larkin) were announced, it is clear that the controlling weight of authority is in favor of upholding these claims. See, e.g., on the issue of "lost days", Awards 8103, 8144, 8145, 8868, 10289, 10517, 10875, 10908, 11460, 11474, 11990, 11991, 11992, 12601, 12722, 12798.

The only new argument which gives us some pause for concern here is the Carrier's emphasis and reliance upon the special significance to its position of Awards 6281 and 6282 (Wenke) rendered in its favor in August, 1953. The Carrier correctly points out that both these earlier decided cases involved not only the same issue in principle as here, but also the same parties and Agreement. Accordingly, it argues, that under Section 3, First (m) of the Railway Labor Act those Awards constituted a final and binding interpretation of this selfsame Agreement, a ruling which was accepted in effect by the parties for some seven years until this present claim arose in 1960, and "cannot be changed by another Award from this Division." Citing, among others, Awards 5133 (Coffey) and Award 11790 (Seff). In other words, the Carrier argues that any change in this settled interpretation of the rules on this property "can only be accomplished through the process of negotiation under Section 6 of the Railway Labor Act and not by further decision of this Board."

In the first place it should be pointed out that the Organization did not "accept" this earlier interpretation without protest, but rather had filed what was for all practical purposes a dissenting memorandum when the Awards in 6281 and 6282 were adopted. More importantly, the Carrier's argument neglects the fact that the very interpretation upon which it relies was not a product of negotiation by the parties, but, rather, only of a ruling of this Board. And, under settled Board precedents, if a previous ruling of this Board is found to be erroneous, the Board has in instances overruled or refused to follow it. See, e.g., Awards 4516 (Carter) and 11653 (Hall).

In the circumstances, the arguments of the Carrier must be rejected and the claims sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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 17th day of June 1965.