# Award No. 14092
# Docket No. MW-14332

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

David Dolnick, Referee

---

## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## MONON RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective agreement beginning with June 19, 1962, when it assigned Mr. C. O. Morrison and his subsequent successor, Mr. S. Austin, to work only two days per week as a Crossing Watchman at Frankfort, Indiana. (Carrier's File MW-2-45.)

(2) Mr. C. O. Morrison be allowed three (3) days' pay at the crossing watchman's straight time rate for each week within which he was assigned to and worked only two (2) days per week.

(3) Mr. S. Austin be allowed three (3) days' pay at the crossing watchman's straight time rate for each week within which he was assigned to and worked only two (2) days per week.

EMPLOYES' STATEMENT OF FACTS: Commencing on June 19, 1962, the Carrier assigned Crossing Watchman C. O. Morrison to work only two days per week on a regular relief assignment established to perform the work necessary on the rest days of the seven-day crossing watchman's position at the tower located at Frankfort, Indiana. On September 26, 1962, the Carrier advised Mr. Morrison that he was suspended from service because he had failed to pass a special physical examination given him on September 10, 1962, and the Carrier subsequently assigned Crossing Watchman S. Austin to work two days per week on the regular relief assignment.

Inasmuch as the agreement prohibits work week assignments of less than five days of each week (with an exception not applicable here), the subject claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated December 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

And;

"The guarantee rule applies only to regular assigned positions. Decisions Nos. 1, 3 Forty-Hour Week Committee. The Saturday work here involved was not bulletined nor otherwise treated as a regular assigned position. The contention of the Organization that all employes assigned to relief positions who were assigned to relieve the same employes on the same days and hours each week, came under the five day guarantee rule is without merit."

Further, in Case No. 3 of this Award, as well as Case No. 4, 5, 8, 10, 11;

"The relief work was therefore performed by an extra or unassigned baggageman within the meaning of Rule 17 (f). Consequently no basis for an affirmative Award exists under the principles announced in Case 1." * * * "The Monday work was performed by Wormwood who was, prior to September 3, 1949, an employe of the Carrier with seniority as a baggageman as of August 6, 1949. The relief work was therefore performed by an extra or unassigned baggageman within the meaning of Rule 17 (f). Consequently no basis for an affirmative Award exists under the principles announced in Case 1."

Mr. Austin has a seniority date of August 22, 1953, and Mr. Morrison as of July 24, 1958, both dates being prior to the instant claim.

Mr. Morrison worked these two days while he was the senior unassigned man. When Mr. Austin in turn became the senior unassigned man he requested and was allowed to work the two days.

In summary, therefore, Carrier submits:

1. The two days per week in question were "tag-end" relief days not a part of any assignment.

2. There were no other such days available to be combined with these two days and establish a regular relief assignment.

3. These two days were properly worked by the senior unassigned employe as provided by Rule 27 (d).

4. That no employe was "assigned" to work these days.

5. The five-day guarantee rule does not apply to work of this nature.

6. Applicable Awards of the Third Division support the Carrier's position.

Carrier requests this claim be denied in its entirety.

**OPINION OF BOARD:** There was a seven day crossing watchman's position at the tower at Frankfort, Indiana. Claimants, on separate dates, were assigned to cover the position on the two rest days. They were assigned no other relief positions; they worked only two days a week.

Employes contend that under Rule 21(a), (d) and (e) and the Agreement, Carrier is required "to establish all possible regular relief assignments with five days of work." Claimants are, therefore, entitled to three additional days' pay for each week when they were assigned to work only two days to said relief position.

There is no disagreement that this was a seven day position and that an employe was assigned to regularly work five days. Rule 21 provides that, with few exceptions, there shall be established a work week of forty hours, "consisting of five days of eight hours each, with two consecutive days off in each seven . . ." Seven day positions may have any two consecutive days as rest days "with the presumptions in favor of Saturday and Sunday." Rule 21(e), in part, reads:

> "(e) Regular Relief Assignments. 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."

This Rule does not establish a guaranteed five day work week for all relief employes. It merely provides that five days of work with two consecutive rest days will be established for "all possible regular relief assignments." The record shows that there were no other relief assignments in the immediate area which could have provided a regular five day relief assignment. It is also a fact that Claimants were not regularly assigned to the relief position either by bulletin or by other means required by the Agreement. There is no probative evidence that the Carrier could have established a regular five day assignment which included the two rest days in question.

Employes also argue that a five day work week for relief employes is guaranteed in Rule 29. That rule says that positions not requiring manual labor, including watchmen, "will be paid a monthly rate based on 169⅓ hours per month." It then provides that:

> "The hours of employes covered by this rule shall not be reduced below eight (8) hours per day for five (5) days per week."

This rule does not refer to unassigned relief employes. It applies solely to those employes who hold regular assigned positions. This was not the case here.

Award 5463 involved this Organization and another Carrier. Rule 50 of the Agreement in that case is very similar to Rule 29 of the Agreement in the current dispute. In that Award we said:

> "The Organization bases its claim on Revised Rule 50 which is set out above. This rule contains a five-day guarantee to employes regularly assigned to the position of pumper. In essence, the Organization's case rests on the issue whether claimant is a regularly assigned pumper. The Organization relies on the fact that the claimant regularly relieves the two pumpers in question."

* * * * *

"We have carefully examined the rules in question. There is no rule which prevents the Carrier from assigning an extra employe to do regular relief work."

In Award 5558 we held that the Carrier need not assign a regular relief employe, but could assign an extra or an unassigned employe to three relief positions a week. We said:

"It is quite evident that the Carrier could not assign a regular relief employe at these points, assuming that the distances were no bar, for the reason that there were but three days (Saturday, Sunday and Monday) of the week in the same seniority district to be filled under the assignments as made."

Claimant were extra and unassigned, available employes who were assigned to work the two rest days in accordance with Rule 27(d) of the Agreement.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.