Award No. 14899
Docket No. CL-14269

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5398) that:

1. Carrier's action in requiring Roundhouse Clerk P. H. Larscheid to work Position No. 3 at Green Bay, Wisconsin on his assigned rest day, Saturday, and paying him under the Notified or Called Rule is in violation of the Clerks' Rules Agreement.

2. Employe P. H. Larscheid, his successor or successors be allowed eight (8) hours at the punitive rate of Roundhouse Clerk Position No. 3 at Green Bay, Wisconsin, less amount paid for Saturday, March 10, 1962 and for each Saturday subsequent thereto that the violation continues.

EMPLOYES' STATEMENT OF FACTS: This claim involves a continuing violation. A prior claim involving the same situation, but for different dates, is now before the Board in Docket CL-12539. The Carrier, however, would not agree to dispose of this claim on the basis of the forthcoming decision in that case because of the inclusion, in the instant case, of the language "his successor or successors" in Item 2 of the Statement of Claim, contending the claim in that respect is improper and barred under the provisions of Article V of the Agreement of August 21, 1954 in that it pertains to unnamed claimants.

Since the filing of this claim the original claimant, P. H. Larscheid has retired under the Railroad Retirement Act. Two employes Doris Ford and G. F. Schneider have succeeded claimant Larscheid as regular assignees on Position No. 3 at Green Bay since his (Larscheid's) retirement in September 1962. Possibly other employes have occupied that position as temporary assignees. The names of the employes, and the period they occupied Position No. 3 at Green Bay is a matter of Carrier's records and can readily be determined from a check thereof.

The pertinent facts in this case are as follows: Prior to September 1, 1949, and continuing until about February 2, 1960 Roundhouse Clerk Position No. 3, Green Bay, Wisconsin was assigned to work eight (8) hours per day,

The case covered by Docket CL-12539 involves only 4 claim dates, i.e., Saturday, March 5, 12, 19 and 26, 1960 whereas the instant case involves Saturdays commencing March 10, 1962.

There is attached as Carrier's Exhibit A copy of Carrier's Ex Parte Submission in Docket CL-12539, which claim is, as explained previously, identical to the instant claim except for claim dates and that portion of the instant claim in behalf of unnamed claimants.

There is attached hereto as Carrier's Exhibit B copy of Carrier's Reply to Employes' Ex Parte Submission in Docket CL-12539.

In addition, there is attached hereto as Carrier's Exhibit C copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of December 17, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties, the Agreement and the facts are identical with those which were involved in our Award 12649. Carrier urges that this denial Award should be followed first, because the Employes wanted the instant dispute disposed of on the basis of the Award in Docket CL-12539 and second, because we should adhere to the principle of stare decisis.

While it is true that the Employes wrote the Carrier on February 4, 1963, asking "whether or not Carrier would be agreeable to dispose of this dispute on the basis of the decision rendered in Docket CL-12539," there is no evidence in the record that the Carrier agreed thereto. Further, Carrier quotes from the Employes' Rebuttal Brief to the effect that this claim is identical with the claim in Docket CL-12539 with the exception of the claim dates and reference to "successor or successors" of the Claimant. But the Employes also say, "However, the Carrier would not agree to apply the decision rendered in Docket CL-12539 to the instant case because in addition to payment for employe Larscheid payment is also claimed for his 'successor or successors'." There is no probative evidence in the record that there was a meeting of minds that the decision in Award 12649 would automatically apply to this claim.

There is no doubt that we should give serious consideration to precedents, particularly when they involve the same parties, the same Agreement and the same facts and circumstances. Such precedents should be seriously considered to preserve the continuity of contract administration. And that should be so even if we, at the moment, should disagree with the findings in such precedents. But, we should also not hesitate to reverse precedents that are palpably wrong. For this reason it is necessary to analyze Award 12649.

Award 12649 denied the claim because Carrier had the right to make recurring calls prior to the 40-Hour Week Agreement and that Carrier's "authority to change this position from a 7 day to a 5 day position" had "not been effectively challenged by the Organization." There is no discussion of the effect of Decision No. 5, Statement No. 4 of the 40 Hour Work Week Committee although it is mentioned as being urged by the Employes.

That Award then proceeds to distinguish the facts in that case from those involved in sustaining Award 8533. Award 12649 says:

"This case simply involved extra work on Saturday from 9:30 A. M. to 12:30 P. M., over and above the regular assignment. It is not an eight hour work period on Saturday, and Sunday is not in question."

In other words, the Board in Award 12649 refused to accept the decision in Award 8533 because in the former case, as here, the Carrier required the employe to be on call on Saturdays while in Award 8533 the employe worked longer hours on Saturday.

But that was not so. Award 8533 says:

"Beginning August 1, 1950, however, the Saturday and Sunday relief was discontinued. Thereafter the regular Clerk, Claimant Young, was regularly called on each of his rest days to perform service. **On Saturdays he was on duty from 8:30 P. M. to 10:30 P. M.** to handle work in connection with Train No. 22, for which he was compensated for three hours at pro rata rate per Rules 33 and 34. **On Sundays Claimant was on duty from 8:30 A. M. to 12:30 P. M.** for work in connection with Train No. 11, being compensated at the appropriate punitive rate under the Rules just cited." (Emphasis ours.)

Thus, the Claimant actually worked only two (2) hours on Saturdays and **four (4) hours** on Sundays.

Award 8533 further says:

"Immediately prior to the 40-Hour Week Agreement the subject position involved service necessary to the continuous operation of the railroad. It was filled by the regular incumbent Monday through Saturday, with relief being provided on Sunday at straight time rate, as provided in Rule 33 of the 1946 Agreement. Under that contract Carrier was not entitled to have the Sunday work of the position performed on a regularly recurring basis under the call rule then in effect (Rule 31). Following the adoption of the 40-Hour Week Agreement there continued to be seven days of service to be performed in the position each week, with the result that it was retained as a seven day position under Rule 27 of the 1949 (current) Agreement. Since during the period of the claim work accruing to the position continued to exist seven days per week, we conclude that Carrier was not entitled to have such work performed on a regularly recurring basis during the rest days of the regular incumbent, Claimant Young. Carrier was required to make the Saturday and Sunday work a regular assignment for an employe. This is not to say that Carrier was contractually limited to assigning a relief employe whose only Saturday and Sunday duties were those accruing to the position in question. Thus Carrier had the option of combining these duties with those of another position of similar craft and class being relieved on said days, or of staggering this position with another."

Carrier affirmatively states in case CL-12539 that "Prior to February 2, 1960, Clerk Position No. 3 at Green Bay was assigned daily. However, due to reduced service requirements Clerk Position No. 3 was, effective February 2, 1960, changed from a '7-day' position to a '5-day' position with rest days of Saturday and Sunday." This is the same Clerk Position that is involved in current claim. The above quote is from Carrier's Ex Parte Submission which is marked Carrier's Exhibit A and is attached to its Ex Parte Submission.

Basically, Award 12649 holds that this type of situation "was in contemplation of the parties when they agreed to the provisions of Rule 28, and we disagree therefore that this Saturday work was or should have been part of the regular assignment." Rule 28 must be read and applied in relation to other rules of the Agreement. It cannot stand alone. The "contemplation of the parties" is best ascertained from the entire Agreement and not alone from a single rule.

After a careful study of the record and the Awards cited we are obliged to conclude that Award 12649 is palpably wrong. We adhere, rather, to the basic principles set out in our Award 8533. Carrier is not entitled to have work performed on a regularly recurring basis on the incumbent's rest days, because work accruing to that position continues to exist six days a week.

Decision 19 of the National Disputes Committee held that "The part of the claim on behalf of 'successors,' as referring to successors of named claimants as incumbents of certain positions is not barred by Article V of the August 21, 1954 Agreement. That is the case here.

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 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14899,
DOCKET CL-14629

The Award refused to follow recent Award 12649 concluding it was palpably wrong primarily because the Board there misunderstood the facts in Award 8533 by finding in Award 12649 that "the Carrier required the employes to be on call on Saturday" while in Award 8533 the employes "worked longer hours on Saturday." It is then stated "but that was not so" since in Award 8533 the Claimant was only on duty from 8:30 P. M. to 10:30 P. M.

The precise language of **Award 12649** on the point reads:

> "The facts in this can be distinguished from those in Award 8533, upon which the Organization principally relies, and we hold that decision not to be controlling in this case. **This case** simply involves extra work on Saturday from 9:30 A. M. to 12:30 P. M., over and above the regular assignment. It is not an eight hour work period on Saturday, and Sunday is not in question. * * * " (Emphasis ours.)

It is not a reasonable interpretation of the above language to conclude that the author, when he used the emphasized wording and went on to point out that it involved three hours of Saturday morning work, was even discussing **Award 8533.** By "this case" he was obviously referring to the docket before him, not **Award 8533.** This is abundantly clear from the use of the identical wording "this case" immediately preceding which very clearly referred to the docket in **Award 12649.** The antecedent of "this" is clear in both contexts. To point out the obvious is a tenuous ground to distinguish **Award 12649,** even if the premise were accurate, which it is not. There is no evidence that the Board in **Award 12649** misread the Saturday work hours in **Award 8533.**

The Majority also states that in **Award 12649** "there is no discussion of the effect of Decision No. 5" and that it is merely "mentioned." The validity of that conclusion will be left to a reading of the Opinion in **Award 12649.**

There is no restriction in the contract to applying the Call Rule to regular calls on assigned rest days. The record contains a discussion of **Award 1178** (Sharfman) and **9971** (Larkin) between these parties which support Carrier's action, as well as **Award 6694** (Leiserson) and **9192** Weston). The inapplicability of **Award 8533** is also fully considered. Further, the Dissent to that Award established its error.

The instant Award is erroneous and not consistent with the Agreement, practice or authoritative decisions.

In view of what has been outlined, **Award 12649** remains undistrurbed as precedent.

T. F. Strunck
R. E. Black
P. C. Carter
G. L. Naylor
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