

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK AND WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it changed the regular assigned rest days of Section Laborers A. L. Claxton, R. L. Brinkley, Andrew Hale, W. L. Muse, C. L. Walker and D. L. Chitwood to other than Saturdays and Sundays [System File MW-ROR-68-8-(B)].

(2) Section Laborers A. L. Claxton, R. L. Brinkley, Andrew Hale, W. L. Muse, C. L. Walker and D. L. Chitwood each be allowed eight (8) hours of straight time pay for each Monday, Tuesday, Wednesday, Thursday and/or Friday that they were not allowed to work, beginning with October 30, 1968.

(3) Section Laborers A. L. Claxton, R. L. Brinkley, Andrew Hale, W. L. Muse, C. L. Walker and D. L. Chitwood each be allowed the difference between what they should have been paid at their time and one-half rate and what they were paid at their straight time rate for each Saturday and/or Sunday that they were required to work, beginning with November 2, 1968.

EMPLOYES' STATEMENT OF FACTS: The claimants are section laborers regularly assigned to Section Force No. 2 at Roanoke Terminal. Prior to this instance, they had been assigned exclusively to a work week of Monday through Friday.

Prior to the effective date of the 40 Hour Work Week Agreement (9-1-49), the Carrier's track forces were assigned to a work week extending from Monday through Saturday. Subsequent to September 1, 1949 and continuing without change until this instance, track forces have been assigned exclusively to a work week extending from Monday through Friday. Whenever track laborer's work was required to be performed on a Saturday and/or Sunday, the necessary number of track laborers were called in their proper seniority sequence, and they were compensated for the overtime work in accordance with the overtime rules.

and Sunday as rest days, were abolished effective at the end of their workday, November 7, 1968. See Carrier's Exhibit A-1. At the same time six positions as section laborers, Section Force No. 2, having rest days other than Saturday and Sunday, were established by bulletin. See Carrier's Exhibits A-2 through A-7. Assignments to such positions (Carrier's Exhibits A-8 through A-13) were as follows:

- A. L. Claxton, Claimant, Rest Days Sunday and Monday
- R. L. Brinkley, Claimant, Rest Days Monday and Tuesday
- Andrew Hale, Claimant, Rest Days Tuesday and Wednesday
- W. L. Muse, New Employee, Rest Days Wednesday and Thursday
- C. L. Walker, New Employee, Rest Days Thursday and Friday
- D. L. Chitwood, Claimant, Rest Days Friday and Saturday

The claim here advanced to this Board contemplates the payment of a minimum day to each of the named claimants for each rest day of their position other than Saturday or Sunday and payment of time and one-half rate for work performed by them on Saturdays and Sundays.

In a companion claim also before this Board the Organization has requested the payment of eight hours to the five senior members of Section Force No. 2 for each Saturday and Sunday worked by the claimants here named.

Letters attached, marked Carrier's Exhibits B through K, reflect the handling of the claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: It is alleged that the Agreement was violated when Carrier changed the regularly assigned rest days of Claimants to other than Saturdays and Sundays.

Rule 36, Section 1 (b) 5 says:

"Deviation from Monday-Friday Week —

If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of Rule 36, Section 1, (b), (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 carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the rules of this agreement."

Did the Carrier have operational problems which could not be met by five-day positions?

The Carrier claims it was necessary to make the change in order to clean cars during the weekend in order that they might be ready as soon as possible to meet the demands and help satisfy the car shortage.

Carrier did not make a detailed explanation of its problems during the handling on the property, though it did mention them as the reason for the change. It might have been better advised to relate the facts, both for the Organization's information in handling the matter on the property and for consideration of this Board.

It did elaborate on its position in the presentation to us, and the Organization replied. The situation as described convinces us that the Carrier did, in fact, properly exercise its managerial prerogative through approaching an operational problem that existed by establishment of 7-day positions. We find the action met the test imposed by the Agreement; that a sufficient problem existed to justify the action.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.