

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19622
Docket Number TE-19462

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly Transportation-Communication, BRAC)
PARTIES TO DISPUTE: (
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Kansas City Terminal, T-C 5824,
that:

In accordance with Rule 12 A superseded by Article V of our Agreement, and on behalf of Wayne C. Richards, please consider this as a claim for 8 hours pay at pro rata rate for Friday, May 1, 1970.

This claim account assignment Bulletin No. 5, dated April 29, 1970 assigning Mr. Richards on a rest day violates our Agreement Rule 8 Section 1(A) also Par. (1) Beginning of Work Week. Since Mr. Richards was ready and not used on this date Carrier also violated Rule 5(C).

OPINION OF BOARD: On Friday, May 1, 1970, when the Carrier assigned the claimant, who held a regularly assigned position with a work week of Friday through Tuesday and rest days of Wednesday and Thursday, to a new relief position, which the Carrier had advertised for bid, with a work week of Saturday through Wednesday with rest days of Thursday and Friday, the claimant lost 8 hours on the first day of his new assignment because he could not work the job on its rest day.

The Organization contends that the assignment of the claimant was in violation of the Agreement. The Carrier contends that the claimant bid on the job of his own free will and was granted the assignment on the basis of his seniority and that the job began on the day he won the bid, regardless of whether it was the rest day of the new job.

The issue in this case has been before this Board on so many occasions that it should be considered Stare Decisis. As recently as Award #19482, Referee Blackwell wrote as follows:

"The rules relied on to support the claim are those derived from the National 40-Hour Week Agreement of 1949. Those rules have been interpreted and applied in many awards of this Board. Some of them deal specifically with the basic issues here involved. Awards 6771 and 18011, for example, held that abolishment and/or rebulletining of a position to accomplish a change in rest days is contrary to the intent of those rules."

The record before us supports the Employees' contention that the re-bulletining of the third shift Towerman position resulted in nothing more than a change in its rest days. It follows that the only remaining problem is whether the 40-Hour Week rules permit a work week to be started on its rest days.

This question has been before the Board in scores of cases, and has consistently been decided in the negative. Award 6519, with Opinion by Referee William M. Leiserson, who, as Chairman of the Emergency Board which granted the 40-hour week and later as arbitrator, wrote most of the rules in question, gave this issue detailed treatment.

Referee Leiserson concluded his remarks on this point with these significant words:

"...By requiring him to take the rest days of the new assignment in advance of the work-days, the Carrier not only violated the 72-hour notice rule, which it admits, but also the 'Beginning of Work Week' rule (8, Section 2 (i)). This rule says a work-week begins 'on the first day on which the assignment is bulletined to work.' (emphasis added) It does not permit a work-week to begin on a rest day. By requiring claimant to start resting on Sunday and Monday, and then continue to work the Tuesday through Saturday position, it clearly started him on the rest days of the new assignment. In this way the assignment was turned around, and would remain turned around as long as the claimant occupied the position."

(The emphasis was added by the Referee. Rule 8, Sec. 2 (i) there was the same as Rule 9 (i) in the present case.)

The principle thus enunciated has been followed and applied with practical unanimity ever since. Reference to Awards 7324, 8103, 8144, 8145, 8868, 10289, 10517, 10786, 10875, 10908, 11460, 11474, 11990, 11991, 11992, 12455, 12601, 12721, 12722, 12798, 13660, 14116, 14213, 15222, 15338, 15441, 15530, 17343, 18011, among many others will substantiate this observation.

In conformity with the precedent thus established and settled, this claim will be sustained."

The assignment of the claimant in this case to his new job on the rest day of that new position was a violation of the Agreement. The Carrier should have permitted the claimant to work his old assignment on Friday, May 1, and then assigned him to his new position on the first work day of his new work week. Rule 9 - Overtime Calls (b) and (c) of the contract provides that it is a specific exception to the time and one-half rule when work in excess of forty hours in a work week or work on the sixth day in a work week is required because an employee is moving from one assignment to another.

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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

The Agreement was violated.

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killum
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.