

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21428  
Docket Number CL-20738

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (  
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7554) that:

(1) Carrier violated the Agreement between the parties when it assigned the five-day position of Rate and Transit Clerk No. 9, awarded to Mr. D. R. Larson, Jr., at Vancouver, Washington Freight Office, a work week of Tuesday through Saturday instead of Monday through Friday as required by the Agreement.

(2) The Carrier shall now be required to compensate Mr. D. R. Larson, Jr., and/or his successors, eight (8) hours at the time and one-half rate commencing Saturday, April 14, 1973 and each Saturday thereafter, and eight (8) hours at the straight time rate for Monday, April 16, 1973 and each Monday thereafter until the violation is corrected.

OPINION OF BOARD: Claimant is assigned to the position of Rate and Transit Clerk at Vancouver, Washington. The Employees assert that Carrier has violated rules by assigning the position a work week of Tuesday through Saturday instead of Monday through Friday. Rule 29 is the principal Rule with which we are concerned and it reads:

"RULE 29. WORK WEEK

NOTE: The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

A. GENERAL. The Carrier will establish, effective September 1, 1949, for all employees subject to this Agreement, a work week of forty (40) hours, consisting of five days of eight (8) hours each, with two consecutive days off in each seven; the work week may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday.  
This rule is subject to the following provisions.

B. FIVE-DAY POSITIONS. On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

C. SIX-DAY POSITIONS. Where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday. It is understood that six-day positions will be filled six days per week except as provided in Rule 33.

D. SEVEN-DAY POSITIONS. On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday. It is understood that seven-day positions will be filled seven days per week.

E. (1) 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 assignment 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 individual agreements. Where no guarantee rule now exists such relief assignments will not be required to have five days of work per week.

(2) Assignments for regular relief positions may on different days include different starting times, duties and work locations for employes of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employe or employes whom they are relieving.

F. 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 29, paragraph B, above, and requires that some of such employes work Tuesday to Saturday instead of Monday to Friday, and the employes 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 agreements."

The key to this matter is whether the position of Rate and Transit Clerk No. 9 is a five-day or a six-day position. Unless it meets the exception stated in Rule 29(b) a five day position "will" have days off of Saturday and Sunday. As provided in Rule 29(c) a six-day position may have either Saturday and Sunday or Sunday and Monday as its days off. The position was

bulletined as a five-day position but Carrier later recognized that it had been so designated in error. Carrier's position is that there is work to be performed six days per week and that the need for service is controlling on the question of the character of the position. Carrier points to the Note under Rule 29 which is repeated here because of its importance to the resolution of this case:

'NOTE: The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of the individual employees.'

The Note shows that the parties did not intend to determine the question of the length of the workweek by the workweek of individuals. That determination can only be made by looking at the service which is necessary. If service is consistently required six days per week then the position held by the employee is a six-day position. The cases have consistently held that the distinction between "positions" and "work" referred to in the Note to Rule 29 must be given effect. The workweek of an individual employee has no bearing on whether the position the employee occupies is a five, six, or seven day position.

Rule 29(c) defines a six day position as follows:

"Where the nature of the work is such that employees will be needed six days each week."

The record before the Board shows that employees are needed six days each week to perform the work of the Rate and Transit Clerk. It is clearly a six day position. The rest days of a six-day position, as provided by Rule 29(c), are either Saturday and Sunday or Sunday and Monday. Claimant is on a Tuesday through Saturday schedule with rest days of Sunday and Monday. His position is a six day position and he is assigned rest days within the requirements of the Rule.

There are two Rate and Transit Clerk positions and the six-day coverage is achieved by having Claimant's workweek cover Saturday, with the other clerk covering Monday. The Employees argue that the sixth day of a six-day position must be filled by a relief position, not another position of the same type. The employees take the position that the six-day position of Rate and Transit Clerk must be filled Monday through Friday by the incumbent and by a relief employee on Saturday. That position gives no effect to the clear provision of Rule 29(c) which permits a Tuesday through Saturday workweek on a six-day position, nor does it give effect to Rule 29(a) which permits a

staggered workweek The Rules permit Carrier to establish a Tuesday through Saturday workweek for a six-day position and to stagger workweeks. When the work of a six-day position can be accomplished six days per week by doing so then Carrier does not have to fill the position by using relief employees as it would otherwise have to do. Since what Carrier has done here is authorized by the Rules the claim must be denied.

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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

