

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21783
Docket Number CL-21283

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
{ Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7898, that:

1. Carrier violated the Agreement between the parties effective March 3, 1970, when it bulletined a Clerk position at the Roundhouse, Grand Forks, North Dakota, as a six day position and assigned Beulah I. Hodges, May 20, 1974.

2. Carrier shall now be required to compensate Beulah I. Hodges eight (8) hours at the time and one-half rate for Monday, May 27, 1974, and each Monday thereafter until the Roundhouse Clerk position is properly relieved on Monday.

OPINION OF BOARD: This claim, like several companion cases involving the same issues, alleges a violation of the controlling Agreement, specifically Rule 29, by Carrier's change from a Monday-Friday workweek to a Tuesday-Saturday workweek, i.e., "staggering" the workweek to cover a six-day position based on service requirements. The first of this line of related cases resulted in our recent Award 21428 dealing with a six-day position and reading in pertinent part as follows:

"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."

The foregoing analysis of Rule 29 was adopted without deviation by the Special Board of Adjustment under Appendix K of the Agreement in its Award No. 23 involving a seven-day position. Award No. 23 stated in pertinent part as follows:

"This Board has carefully studied the evidence proffered by both parties in support of their respective positions, particularly the prior Awards that have interpreted Rule 29, and the genesis of the Rule on the former Great Northern Railway. Based thereon, we are compelled to conclude that the parties' Working Agreement does not prohibit Carrier from staggering the work week of five-day positions in order to fill seven-day positions as they have done in the present case. We have painstakingly reviewed the findings of Third Division Award No. 21428, between these same parties, which Award we conclude is dispositive of the issue at hand. That Award, in our opinion, correctly applied the provisions of Rule 29. And although it applied to a six-day rather than a seven-day

"position, nonetheless, the reasoning of that Award is clearly applicable to the instant claim. Notwithstanding the Labor Member's lucid Dissent to Award 21428, this Board does not consider the Award palpably erroneous.

Award No. 21428, we conclude, placed proper reliance on the Note to Rule 29. The Note provides that 'The expressions "position" 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.' Further, Award No. 21428 went on to correctly hold that Carrier could stagger work weeks in order to fill six-day positions. As noted heretofore, this Board considers Award No. 21428 applicable to the instant claim although here the Carrier staggered work weeks in order to fill a seven-day position rather than a six-day position. Carrier was not required to fill the seven-day position by using relief employees or alternatively, by using the Claimant on an overtime basis as claimed by the Employees.

This Board assumes that the respected Referee who authored Award No. 21428 carefully considered all the arguments proffered by the Employees. Accordingly, since we do not consider that Award palpably erroneous, we are compelled to follow it in the analagous dispute herein before us. This Board can discern no contractual proscription to the Carrier assigning a relief clerk and two regular clerks with staggered work weeks to perform services needed seven days a week as they have done here. Claimant's Yard Clerk Position No. 6 was not blanked on Wednesday and Thursday, and thus Rule 29 was not violated as a result. The claim must therefore be denied."

We find no palpable error in the cited authorities and conclude that they are dispositive of the claim before us in this case. 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;

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That this Division of the Adjustment Board has jurisdiction
over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1977.

