

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23457
Docket Number SG-23243

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis - San Francisco Railway Company:

On behalf of the occupant of Position #4, Cherokee Yards, for eight hours' at overtime rate for working assigned rest day on Thursday of each week starting February 8, 1979, and continuing as long as Position #4 works 12:00 midnight to 8:00 a.m. on Thursdays which is assigned rest day of Position #4."

(Carrier file: D-9839)

OPINION OF BOARD: After carefully reading and studying the complete record in this dispute there appears to be but two (2) critical elements involved herein. The first is that Position No. 4, Signal Maintainer at the Cherokee Yards, a regular relief position, which was established by Bulletin S-2 dated January 5, 1979, and which thereafter was awarded to Employee E. B. Rankin¹ as per Bulletin S-4 dated January 22, 1979, was erroneously advertised as being scheduled from "12:00 P.M. to 8:00 A.M. Thursday" and with "Rest Days Thursday and Friday." Secondly, insofar as said position is a relief assignment which relieves three (3) other assignments with different starting times, the particular schedule which Carrier has elected to implement in the instant case is such that of the five (5) eight-hour shifts to which Claimant is assigned from Saturday to Thursday, no assignment is made from 12:00 Midnight Monday to 12:00 Midnight Tuesday; and, in addition, Claimant is assigned two (2) consecutive twenty-four hour rest days from 8:00 A.M. Thursday to 8:00 A.M. Saturday.

Organization's position herein is that since Bulletin S-2 advertised said assignment with Thursday and Friday rest days, then any work which is performed by Claimant on Thursday should be paid at the applicable overtime rate. In addition, Organization further contends that Claimant's performance

¹Organization in its Ex Parte Submission contends that Employee G. W. Lewis was awarded Position No. 4 by Bulletin S-4 dated January 22, 1979, however, the Board notes that this contention is erroneous since said Bulletin, as well as Carrier Exhibit "C" dated January 19, 1979, clearly indicate that said position was awarded to Employee E. B. Rankin.

of work from 12:00 Midnight Wednesday to 8:00 A.M. Thursday, which is the sixth day of Claimant's scheduled work week, violates Rule 21(C) of the parties' Agreement which, according to Organization, specifies that, "... work in excess of forty straight time hours in any workweek or work on the sixth or seventh day of any workweek shall be paid for at the applicable overtime rate..." (Emphasis added by Organization).

Carrier's position, simply stated, is that said assignment was made in accordance with Rule 10(f), (g), (h) and (k), and that the disputed 12 Midnight Wednesday to 8:00 A.M. Thursday shift is neither "work in excess of forty straight time hours in a workweek," nor is said work performed on the sixth or seventh day of Claimant's workweek. In support of its aforesaid position, Carrier maintains that "(T)he work assignment on Day 5 is encompassed with the hours of Day 5 of the workweek of Relief Position No. 4, and there are two consecutive 24-hour rest days provided following the fifth workday and the beginning of the first workday in the following workweek." Additionally, Carrier argues that "... a 'day' in railroad terminology has always been interpreted to be the 24-hour period commencing with the beginning of the employee's regular shift" (Second Division Award 7073), and that such an interpretation has been consistently applied in the instant dispute.

While it is perfectly clear to this Board that the maker of Bulletin S-2 erred by incorrectly identifying the precise rest days for the disputed assignment, the Board is convinced nonetheless that said error was unintentional, did not result in any actual damage or loss to Claimant, and was a mistake of such an obvious nature there should not have been any doubt by any of the parties as to the true intent and meaning of the Bulletin itself. Indeed, regarding this latter point, even Organization in its Ex Parte Submission refers to the matter as a "contradiction". Thus this fact alone quite clearly demonstrates that the issue itself was but a minor matter which could have been readily corrected, but which, unfortunately, was allowed to escalate into the matter which is presently before us.

In addition to the foregoing, however, which alone appears to be sufficient to dispose of instant dispute, the Board is further convinced the Organization's literal interpretation of the word "day" (i.e.--12 Midnight to 12:00 Midnight) and its attempted application in the instant case, is not only unreasonable, given the nature of the particular relief assignment involved, but it is also inaccurate. In this regard, not only has it been sufficiently well established by Boards on this and all other Divisions that "... an employee's work day begins at the commencement of his assigned tour of duty and ends 24 hours subsequent thereto," (Second Division Awards 1485 and 1673; Third Division Award 20531; Fourth Division Awards 737, 2697 and 1987), but additionally, Carrier's actions herein appear to be completely in accordance with the duties and obligations imposed upon Carrier as per Rules 10 and 21---Claimant was assigned to work an 8 hour shift on five (5) consecutive 24-hour periods and was assigned two (2) consecutive 24-hour rest days. For these reasons, therefore, Carrier's actions herein shall remain undisturbed and the Claim shall be denied in its entirety.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.