

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10182) that:

1. By letter dated July 21, 1986, Carrier commenced to violate the Agreement between the parties specifically but not limited to Rule 50(b) when it failed to establish the rest days of Saturday and Sunday for the position of Clerk at Carey, Ohio.

2. As a result of said violation Carrier shall be required to compensate Clerk B. L. Hill eight (8) hours at the rate of his position at the overtime rate of pay for each Saturday thereafter he is required to perform service. This pay to be in addition to any other pay received on each subsequent Saturday."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In the instant case there had been two positions at Carey, Ohio, that of Clerk and Agent. The record indicates that by notice of July 1, 1986, the position of Agent with assigned rest days of Saturday and Sunday was abolished. The Claimant held the position of Clerk and was by letter also dated July 1, 1986, assigned the duties of the Agent's position and required to act in that capacity. Claimant had assigned rest days of Sunday and Monday.

By letter of July 15, 1986, the Organization requested a change in Claimant's rest days as Clerk to Saturday and Sunday in accordance with Rule 50(b). That Rule reads in part:

"(b) On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday."

The Organization argued on the property that Carrier failed to decline the Claim within sixty days as required by Rule 48 of the Agreement. It further argued that due to customers being closed on Saturdays and the use of an extra board employee on Monday, the assigned rest days should be changed as the work could reasonably be done on the requested schedule.

A review of the case at bar must first direct the Board's attention toward procedural issues. The Board finds the Trainmaster's response of July 21, 1986, was a denial of Claim. No provision of the Agreement proscribes a particular language or manner and we therefore find no violation of Rule 48 (Third Division Award 21342). Further, the correspondence by Carrier which was exchanged after the Organization served notice of intent to file Submission comes too late for our consideration. Finally, the Board does not find the Claim before us at fatal variance with the Claim as progressed on property.

As to the merits of the Claim, the Board has reviewed the record presented on property. The Carrier argued that the Position of Clerk was a six day position since 1981 with rest days of Sunday and Monday. Monday was filled by an employee off the extra board. No change had occurred in the position other than Claimant was assigned the remaining duties of the abolished Agent's position. Claimant remained in his Clerk's position. The Organization does not effectively rebut those assertions.

In addition to noting the Clerk's position is a six day position, while Rule 50 refers to "positions the duties of which can reasonably be met in five (5) days, ..." the Carrier also presents un rebutted evidence of work done both Mondays and Saturdays. The Organization's allegation that "all the customers of the railroad are closed... on Saturdays and Sundays" is clearly refuted. The survey presented by the Trainmaster is not contested on the property and stands as fact.

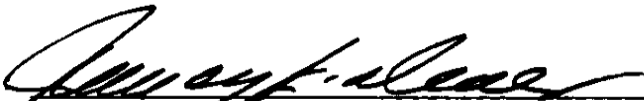
The Board does not find sufficient probative evidence submitted by the Organization of a Carrier violation of the Agreement. There is a lack of proof that the position herein referred to could reasonably be completed in a five day work week. The Clerk was not assigned the Agent's position and the rest days of the Clerk's six day position are not in violation of any Agreement provision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.