

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation (Amtrak)
(Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to permit Messrs. R. Gallagher, D. Ladislav, R. Gaskill, J. Kelly, T. Reid, A. Bove and M. Leonetti to work their regular eight (8) hour assignment on Sunday, November 11, 1984 (System File NEC-BMWE-SD-1239).

(2) As a consequence of the aforesaid violation, Messrs. Gallagher, Ladislav, Gaskill, Kelly, Reid, Bove and Leonetti shall each be allowed eight (8) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

Claimants are all members of Gang Z-102. Prior to Thursday, November 8, 1984, the workweek of this Gang was Sunday through Thursday with Friday and Saturday as rest days. On November 8, 1984, the Gang was notified that its daily hours of assignment would be changed. Also it was told that its workweek would now be Monday through Friday with Saturday and Sunday as rest days.

The members observed Friday, November 9 and Saturday, November 10, 1984, as rest days for the workweek which they were ending. On Sunday, November 11, 1984, they were also required to observe that day as a rest day for their new workweek assignment. This Claim seeks 8 hours' pay at straight time rates for not being allowed to work on that day.

The operative Rule involved herein is Rule 40. It reads:

"RULE 40

BEGINNING OF WORK WEEK

The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days, starting with Monday."

This Rule had its genesis in the 1949 Forty Hour Work Week Agreement, and we have had many occasions to decide cases involving its application. For example, in Third Division Award 19622 we stated:

"The record before us supports the Employees' contention that the rebulletining 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)). The 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 Rule under review here is the same as that involved in Third Division Awards 6519 and 19622. As was the situation in those cases, the members of Gang Z-102 were required to start their new workweek on a rest day. In conformity with precedent established and settled, this Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 10th day of August 1989.