Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30478
Docket No. SG-29628
94-3-90-3-617

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Please accept this claim on behalf of Mr. M.S. Long employee #203757 Headquartered at West Detroit Tower Detroit Michigan. Territory is entire Detroit terminal area covered by seniority District #18.

A.) On Tuesday May 16, 1989 as this was the day you abolished trick coverage at West Detroit. Mr. M.S. Long reat (sic) day should have been changed to Saturday and Sunday.

B.) This is a violation of current B.R.S. Agreement. Rule 5AI-b is being violated by the carrier in that the carrier has shown that thier (sic) is not a need for Lapshifts by abolishing same. Also state on a five day work week Saturday and Sunday will be the days off.

C.) I request you pay Mr. Long time and one half for every Saturday worked beginning with May 20, 1989. And continues until this dispute is settle (sic) to our satisfaction. Also, I request you pay Mr. Long eight hours pay starting with Monday May 22, 1989. For loss of work opportunity, and continues until this dispute is settled to our satisfaction." Gen'l. Chmn's. File No. SG-174-Long. Carrier's File No. SG 174. BRS Case No. 8116.CR.

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 employee 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.

A claim was filed by the Organization on grounds that the Carrier violated Rule 5-A-1 (b) of the Agreement by the manner in which it assigned the Claimant after the Carrier abolished two positions at West Detroit, Michigan, on May 16, 1989.

The Rule at bar reads, in pertinent part:

"Rule 5-A-1

The established work week for all employees covered by this Agreement, subject to the exceptions contained in this rule, is forty (40) hours', and consists of five (5) days of eight (8) hours each, with two consecutive days off in each seven. The work week may be staggered in accordance with the Company's operational requirements. So far as practicable the days off shall be Saturday and Sunday. The foregoing work week is subject to the provisions which follow:

.....

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

The facts of this case show that prior to May 16, 1989, there were five Maintainer positions at West Detroit which was a seven day a week operation. These positions were as follows:

First Shift: Two positions

(1) One position: Saturday/Sunday rest days.
(1) One position: Sunday/Monday rest days. (Held by Claimant)

Second Shift: One position

(1) One position: Monday/Tuesday rest days.

Third Shirt: One position

(1) One position: Wednesday/Thursday rest days.

Relief: One position

(1) One position: Friday/Saturday rest days.

On May 16, 1989, the Carrier abolished the Third Shift position and the Relief position. The assignments on the other three positions remained the same, including the designated rest days. The Claimant, therefore, kept his Sunday and Monday rest days and continued to fill his first shift position until September 9, 1989. On this latter date, he was displaced.

It is the Organization's view, in this case, that after the abolishment of the two positions his rest days ought to have been, not Sunday and Monday, but Saturday and Sunday.

In denying the claim on the property, the Carrier states that even after the abolishment of the two positions, West Detroit remained a seven day a week operation. The Carrier argues, in this respect, as follows:

> "Prior to May 16...West Detroit was a seven-day operation. Even as a result of the two jobs being abolished, West Detroit was still a seven day operation since a Maintainer is on duty every day of the week at this location. West Detroit is a point where the Detroit Line, North Yard Branch, and the Michigan Line, in addition to the Norfolk Southern, cross. The freight operation alone is sufficient to justify the existing seven-day operation. In addition to the above, Amtrak operates four trains per day, Monday through Thursday, and six trains per day, Friday, Saturday and Sunday through West Detroit."

In responding to this argument by the Carrier on the property, the Organization states the following, cited here in pertinent part:

"The (assertion) that the maintainers were all at West Detroit is not relevant. The facts are that...they are headquartered at the same building, but they do not have different territories. The territories are not manned seven days a week, nor has the Carrier proven the need to request seven day coverage, nor did the Carrier request permission to have seven day coverage in such an unusual situation from the Organization.

The Carrier, in most of its C&S maintenance locations across the system, do not have seven day coverage, especially at its interlocking and headquarters points.....The locations that are manned have been agreed upon by the organization after Conrail had proven their needs were warranted. At West Detroit, the Carrier is utilizing partial seven day coverage using maintainers at the present time from other territories to cover the West Detroit territory, but by concurrence of this organization...."

As a preliminary matter, the Carrier argues, that all handling of this case on the property was limited to a claim alleging violation of Rule 5-A-1 (b) and that subsequent attempts by the Organization, in its Submission, to address the question of an alleged violation of Rule 5-A-1 (f) is improper. Secondly, the Carrier argues that the evidence of record found in Organization's Exhibit 6 is improperly before this Board.

Review of the record shows that the Organization explicitly states in its original claim that this case deals with alleged violation of Rule 5-A-1 (b) and that in subsequent handling of the claim on property the Organization never addresses any other provision of its Agreement with the Carrier. The Board can but reasonably conclude, therefore, that reference to an alleged violation of any other provision of the Agreement, by the Organization, after this case was docketed before the Board, is improper. The specific provision which the Carrier objects to is Rule 5-A-1 (f). The claim by the Organization, in its Submission, is that prior settlements of claims between the parties, with respect to this latter provision, should set precedent in this case. Information on such settlements is found in Organization's Exhibit 6 accompanying its Submission to the Board. The Board must conclude that this evidence, likewise, is improperly before it.

It is well established that the Board cannot consider evidence, in its deliberations, which was not submitted during the handling of a case on property. This firmly entrenched doctrine, codified by Circular No. 1, has been articulated in many Awards (Third Division Awards 20841, 21463, 22054 inter alia.). The Board must limit its deliberation, in the instant case, therefore, to whether there was a violation of Rule 5-A-1 (b) as the Organization stipulated in its original claim and in its subsequent handling of that claim on the property. Attempts by the Organization to expand the original claim must be respectfully dismissed.

The language of Rule 5-A-1, which must be understood as integral to any sub-section of Rule 5, including Section (b), unambiguously states that the work week may be staggered "...in accordance with the company's operational requirements...." The Carrier has reasonably explained, in the record, which is cited in the foregoing, what those operational requirements were, which required that West Detroit remain a seven-day operation. The Board is unable to conclude from either arguments or evidence presented to the contrary by the Organization, on the property, that the application of such operational requirements represented a violation of Rule 5-A-1 (b) by the Carrier. It may well be, as the Organization argues, that in "...most of (the Carrier's) C&S maintenance locations across the system..." there is no need for seven-day coverage. Such argument, in itself, is insufficient to warrant conclusion that such coverage might not have been warranted at West Detroit, as the Carrier argues, as precisely one of those excepted locations which the Organization admits exists on the Carrier. The Board has studied the distinction which the Organization references between headquarters and territories in its handling of the case on the property. There is simply insufficient information of record to permit any conclusions by the Board, in the instant case, relative to the applicability of such distinction to Rule 5-A-1 (b).

Upon the evidence of record before it the Board must conclude that the claim cannot be sustained.

Award

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.