

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31295
Docket No. SG-31245
95-3-93-3-287

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of various members of CNW Signal Crew #3 for the following straight time amounts: J.M. Copeland - 36 hours; R.L. Martens - 40 hours; D.E. Westfall - 36 hours; S.A. Stansberry - 36 hours; J.H. Weber - 40 hours; J. Rasmussen - 8 hours; B.D. Steeno - 32 hours; D. Berndt - 40 hours; R.H. Diehl - 40 hours; R. Venegas - 20 hours; S. Reed - 8 hours; and, P. Anderson - 8 hours. Payments claimed, account Carrier violated the current Signalmen's Agreement, particularly Rule 5, when it established a work week for the Claimants' positions with rest days of other than Saturday and Sunday. Carrier's File No. 79-92-18. General Chairman's File No. S-AV-70. BRS File Case No. 8992- CNW."

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.

The Claimants in this case were regularly assigned to Berkeley Suburban Crew No. 3 which was previously assigned to work Monday through Friday with Saturday and Sunday as rest days. Beginning in February, 1992, Carrier changed the rest days of Crew No. 3 - along with several other Signal Crews - to provide regular assigned service on all seven days of the week to insure that programmed construction and maintenance work would be performed on a seven-day basis. As a result of this action by Carrier, Claimants' rest days became Sunday and Monday. The claim as set forth in this dispute demands payment of 8 hours straight time for each Monday not worked by the crew members plus an additional 1/2 time for each Saturday worked by the crew members.

The applicable agreement rule here involved is Rule 5 - WORK WEEK which reads as follows:

"Rule 5 - WORK WEEK:

The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specific number of days per week, and not to the work week of individual employees.

- (a) General - Subject to the exceptions contained in this agreement, there is hereby established a work week of 40 hours, consisting of five days of eight hours each with two consecutive days off in each seven; the work weeks may be staggered in accordance with operational requirements; so far as practicable the days off shall be Saturday and Sunday. The work week rule is subject to the following provisions:
- (b) Five-day Positions - On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.
- (c) Six-day Positions - Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.
- (d) Seven-day Positions - Where the nature of the work is such that employees will be needed seven days each week, any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

- (e) Regular Relief Assignments - All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under provisions of this agreement.

Assignments for regular relief positions may, on different days, include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employees whom they are relieving.

- (f) Deviation from Monday-Friday Week - When, due to an operational problem, management requires some employees assigned to work extending over a period of five days per week to work Tuesday to Saturday instead of Monday to Friday, and employees feel assignment can properly be made Monday to Friday, the matter of assignment may be processed as a grievance or claim under provisions of this agreement.
- (g) Nonconsecutive Rest Days - The typical work week is to be one with two consecutive days off. However, when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by paragraphs (c), (d) and (e) of this rule, the following procedure shall be used:

- (1) All possible regular relief positions shall be established pursuant to paragraph (e) of this rule.
- (2) Possible use of rest days other than Saturday and Sunday, by agreement or in accordance with other provisions of this agreements.
- (3) Efforts will be made to agree on the accumulation of rest time and the granting of longer consecutive rest periods.

- (4) Other suitable or practicable plans which may be suggested by either party shall be considered and efforts made to come to an agreement thereon.
- (5) If the foregoing does not solve the problem, then some of the relief men may be given non-consecutive rest days.
- (6) If after all the foregoing has been done there still remains service which can only be performed by requiring employees to work in excess of five days per week, the number of regular assignments necessary to avoid this may be made with two non-consecutive days off.
- (7) The least desirable solution of the problem would be to work some regular employees on the sixth or seventh days at overtime rates and thus withhold work from additional relief men.
- (8) If there is a disagreement over the necessity of splitting the rest days on any assignments, the management may nevertheless put the assignments into effect subject to the right of employees to process the dispute as a grievance or claim under provisions of the applicable rules, and in such proceedings the burden will be on the management to prove that its operational requirements would be impaired if it did not split the rest days in question and that this could be avoided only by (sic) working certain employees in excess of five days per week.

* * *

- (i) 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."

It is the Organization's position that Rule 5(b) mandates that rest days for five-day positions must be Saturday and Sunday. They argue that the Claimant crew had previously worked only five days per week and under the changed operation they continued to perform service on only five days per week. The Organization concludes, therefore, that the same work could have been performed from Monday to Friday and the change of rest days violated the requirements of Rule 5(b).

Carrier's position centers around the unchallenged fact that, at the start of the 1992 construction season, the numerous construction projects, upgrading of equipment and normal maintenance work which was programmed to be accomplished demanded that Signalmen be on duty seven days per week. To achieve this result, Carrier argues that, as permitted by the provisions of Rule 5(a) and 5(d), they set the rest days of the seven signal crews which were assigned in the Suburban Operating Division to provide seven-day service. At Berkeley, Claimant's crew was arranged to work Tuesday through Saturday with Sunday and Monday as rest days. The other signal crew at Berkeley was arranged to work Sunday through Thursday with Friday and Saturday as rest days. Still other signal crews on the Operating Division had rest days of Sunday and Monday and/or Friday and Saturday. Carrier insists that the specific language of Rule 5(d) permits such an operation and no violation of any rule has occurred in this instance.

The Board is particularly impressed with the sound logic expressed on this subject by Award 5556 of this Division - which incidentally involved these same parties - in which we read:

"All regular assignments under that agreement are for five days each week. Six and seven day assignments no longer exist. Whether a position is a five, six or seven day position is not affected by the individual assignment of an employee. If service, duties or operations are required six days each week, the positions are six day positions, even though the occupant is assigned five days only. The necessary work remaining to be performed after the five day assignments are made in accordance with Rules 5-1/2 (b), (c) and (d), is required to be made as provided in Rule 5-1/2 (e) and other pertinent provisions of the agreement.

But the latter has no relation to a regular assignment of an employe to a six day position under the provisions of Rule 5-1/2 (c)."

The Board is also convinced that the language of Rule 5 as quoted above is clear and unambiguous in its definition of "positions and work." The "... service, duties, or operations necessary to be performed the specific number of days per week" determines the type of situation which exists - not the work week of the individual employee. In this instance, Carrier has made a convincing presentation relative to the need for the performance of service on all seven days of the week during the period in question. The Organization has not persuasively rebutted that presentation. Rule 5(d) permits the rest day assignments as were made in this case. The claim of the Organization is rejected.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimants not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.