

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31298
Docket No. SG-31479
95-3-93-3-483

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
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

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

Claim on behalf of M.A. Linstead for payment of 120 hours at the straight time rate and establishment of a work week of Monday through Friday, account Carrier violated the current Signalmen's Agreement, particularly Rule 5, when it assigned the Claimant a work week of Tuesday through Saturday and required the Claimant to perform service on Saturdays, at the straight time rate, and deprived him of his regular assignment of straight time service on Mondays, from April 18 to June 29, 1992. Carrier's File No. 79- 92-48. General Chairman's File No. S-AV-116. BRS File Case No. 9105-CNW.

CASE No. 2

Claim on behalf of M. Linstead for payment of 36 hours at the straight time rate and establishment of a work week of Monday through Friday, account Carrier violated the current Signalmen's Agreement, particularly Rule 5, when it assigned the Claimant a work week of Tuesday through Saturday and required the Claimant to perform service on Saturdays, at the straight time rate, and deprived him of his regular assignment of straight time service on Mondays, from July 27 to August 8, 1992. Carrier's File No. 79-92- 65. General Chairman's File No. S-AV-130. BRS File Case No. 9165-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.

This case involves an application of the provisions of 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."

This Board's review of the on-property claim handling as well as a consideration of the respective submissions reveals that this dispute involves a single Signal Inspector position whose assigned rest days were changed from Saturday and Sunday to Sunday and Monday. There is nothing in the case record from either party relative to exactly when this change occurred. There is nothing from either party to explain the break in the claim period. Claim No. 1 covers April 18 to June 29, 1992. Claim No. 2 covers July 27 to August 8, 1992. There is nothing from either party to explain Carrier's assertion in their submission to the Board that "Claimant's position, that of Signal Inspector, was assigned rest days of Sunday and Monday so as to provide better coverage with other Signal Inspectors." What other Signal Inspectors? Where? What rest days? None of this is answered.

The Board's review of the case record has determined that Carrier has indeed made a prima facie case that the several Signal Crews employed on their Suburban Division were arranged with staggered rest days to accommodate the work which was being performed by those crews. However, having said that, we are faced here with a single independent Signal Inspector position which, according to Carrier's position during the on-property handling of the dispute, "... works directly with Signal Crews, as he performs tests on the various projects constructed by the Signal Crew. Claimant's work days were therefore changed from Monday through Friday to Tuesday through Saturday in order to correspond with the Signal Crew." The Signal Crews, however, according to Carrier's submission to the Board had as rest days Friday and Saturday (2 crews), Saturday and Sunday (3 crews) and Sunday and Monday (2 crews). This begs the unanswered question, which crew did the Signal Inspector work directly with? There is no explanation to be found in the case record.

There is no real question in the mind of the Board relative Carrier's right to create staggered work weeks or to deviate from a Monday-Friday work week where the nature of the work requires six or seven days of service each week. What is in dispute in this situation is Carrier's unilateral right to assign other than Saturday and Sunday as rest days on a 5-day position where the duties of that position "can reasonably be met in five days."

The Board is not impressed with the Organization's argument relative to the necessity to create relief assignments. That is not an issue in this case. The Board is, however, impressed with the logic expressed in Third Division Award 13834 which held that "when managerial judgment is challenged, it is the obligation of management to supply evidence by which this Board can decide if that judgment was proper."

In this case, the Organization has repeatedly challenged Carrier's position relative to the independent nature of this Signal Inspector position. Carrier has failed to show that the Signal Inspector work was, in fact, performed on more than five days per week. Carrier has not shown by probative evidence that Signal Inspector work was performed on Sundays or Mondays. Carrier has not shown by probative evidence that any other Signal Inspector encountered a change of rest days or that any other Signal Inspector performed service as such in this territory on Sundays or Mondays. It is the Board's conclusion, on the basis of this case record, that the Signal Inspector position here in question was, in fact, a 5-day position and as provided by Rule 5(b) entitled to have Saturday and Sunday as rest days.

As to the remedy sought in this dispute which is additional one-half time for service performed by Claimant on Saturdays plus 8 hours straight time for work not performed on Mondays during the respective claim periods, the Board is of the opinion that the conclusion reached in Award 2 of Public Law Board No. 4716 is applicable in this instance. Therefore, it is the Board's conclusion here that Claimant is not entitled to any additional payment for the Mondays of the claim periods on which he did not work. He is, however, entitled to payment of the additional one-half time for service performed on the Saturdays during the claim periods which he would have received for work on his rest day but for Carrier's improper changing of the rest days.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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