

PUBLIC LAW BOARD NO. 2960

AWARD NO. 80  
CASE NO. 93

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, commencing January 27, 1982, it assigned the Nelson Section Crew a work week of Wednesday through Sunday with Mondays and Tuesdays designated as rest days. (Organization File 3T-2971; Carrier File 81-1-307).
- (2) The members of the Nelson Section Crew and any employee assigned thereto subsequent to January 27, 1982, shall be allowed the difference between the straight time rate and time and one half rate for each Saturday and Sunday worked and continuing until the rest days are returned to the contractually designated Saturdays and Sundays for a five day position.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. Prior to January 27, 1982, the Nelson Section Crew, headquartered at Nelson, Illinois, was regularly assigned a work week of Monday through Friday with Saturdays

and Sundays designated as rest days. Per Bulletin No. 1 dated January 27, 1982, the Section Crew's work days were changed to Wednesday through Sunday with Mondays and Tuesdays designated as rest days.

The claim basically protests this change as a violation of Rule 23(a) and (b). The Organization notes that Section (a) of the rule establishes the forty (40) hour work week, allows for the staggering of work weeks in accordance with operational requirements and specified that so far as practicable the days off shall be Saturday and Sunday. In dealing with five-day positions which existed in this dispute, Section (b) specifically stipulates that the rest days will be Saturdays and Sundays designated as rest days. The Organization also believes it to be of particular significance that the gang had been assigned Saturday/Sunday rest days for years and years before the change. They suggest their rest days were Saturday/Sunday because the operational requirements so permitted. Thus, in view that the duties of the gang and the operational requirements were the same after the change as those prior to the change, the Carrier violated the Agreement.

The Carrier contends that in the context of Rule 23, the parties contemplated employees having other than Saturday and Sunday as rest days. They note Section 23(a) includes the phrase "the work weeks may be staggered in accordance with operational requirements," and that Section (f) specifically covers deviation from the Monday through Friday work week. Last, they draw attention to Section (d) which states in regard to seven-day positions, that "any two consecutive days may be the rest days with the presumption in favor of Saturday and

Sunday." Thus, in their opinion, this rule does not require that Saturday and Sunday be the designated rest days.

The pertinent portions of Rule 23 read as follows:

Rule 23 - Work Week

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

"(a) General - Subject to the exceptions contained in this Rule, there is hereby established a work week of 40 hours, consisting of five days of eight hour 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 rules are 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 seven 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 employee or employees whom they are relieving.

"(f) Deviation from Monday - Friday week - If, in positions

and work extending over a period of five days per week, an operational problem arises which the Company contends cannot be met under provisions of paragraph (b) hereof and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend to the contrary, and if the parties fail to agree thereon, then if the Company nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim."

In considering the arguments of the Organization, we first must conclude that Section 23(b) does not apply, therefore it cannot be controlling. They contend the positions are 5-day positions and therefore Saturday and Sunday will be the days off. However, the preamble to Rule 23 indicates the term "work" refers to the nature of the operations and not the work week of individual employees. It is true that the employees have been regularly assigned for 5-day-a-week positions exclusive of overtime, but it is the nature of the work which dictates that whether it is a 7-day, 6-day or 5-day position. This point was recognized early as in Award 5556 (Carter) of the Third Division. It was stated:

"All regular assignments under (the 40 Hour Work Week 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 employee to a six day position under the provisions of Rule 5-1/2(c)."

In this case, it can hardly be denied that maintenance of the right of way is a seven day a week proposition, as not only is that

the nature of the operation, but the employees frequently worked overtime on weekends. The disputed positions are clearly seven day per week positions. Therefore, they are controlled only by the general provisions of 23(a) and 23(d). Similarly, 23(f) would not seem to apply because it deals with deviation from 23(b) situations.

Rule 23(a) and (d) do express a preference, although not a strict requirement, for Saturday/Sunday rest days. 23(a) says Saturday/Sunday should be the rest days insofar as "practicable," and (d) says there will be a "presumption" in favor of Saturday and Sunday as days off.

Thus, it would seem that inasmuch as there is no strict requirement for Saturday/Sunday but there is a preference, the Carrier has the burden to show that Saturday/Sunday rest days were not "practicable" in a legitimate business sense.

It is the Board's conclusion that the Carrier's decision to change the rest days was not unreasonable. The Carrier cited increasing difficulties finding employees available to work on Saturdays and Sundays and the mere magnitude of traffic in the area as factors as to why it wasn't--in the words of the Agreement--practicable. The Organization has failed to overcome this prima facie case.

AWARD:

In view of the foregoing, the Claim is denied.

G. Vernon

Gil Vernon, Chairman

H. G. Harper

H. G. Harper, Employer Member

J. D. Crawford

J. D. Crawford, Carrier Member

Dated: 2/22/85