

PUBLIC LAW BOARD NO. 4716

Award No. 2
Case No. 2

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

-AND-

UNION PACIFIC RAILROAD COMPANY

MAR 18 1986
VICE PRES
LABOR

STATEMENT OF CLAIM:

(a) The Union Pacific Railroad Company has violated its Agreement with the Brotherhood of Railroad Signalmen effective October 1, 1986, and particularly Rule 3(b) and Appendix "20" thereof.

(b) The Carrier should now pay Claimant one and one-half times his regular straight time rate for each hour worked on Saturday and Sunday and should also pay Claimant at his regular straight time rate for eight (8) hours each day other than Saturday and Sunday on which he was not allowed to work.

RELEVANT CONTRACT LANGUAGE:

RULE 3 - 40-HOUR WORK WEEK

The expressions "positions" and "work" used in this rule 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. There was established, effective September 1, 1949, for all employees, subject to the exceptions contained in this agreement, 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 the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this agreement.

(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. On positions which have been filled seven days per 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 individual agreements.

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

(g) Nonconsecutive Rest Days. The typical work week is to be one with two consecutive days off, and it is the Carrier's obligation to grant this. Therefore, when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by Sections (c), (d), and (e), the following procedure shall be used:

(1) All possible regular relief positions shall be established pursuant to Section (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 agreement.

(3) Efforts will be made by the parties 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 of the parties 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 employees may be given nonconsecutive 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 nonconsecutive 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 the parties are in disagreement over the necessity of splitting the rest days on any such assignments, the Carrier may nevertheless put the assignments into effect subject to the right of employees to process the dispute as a grievance or claim under the rules agreements, and in such proceedings the burden will be on the Carrier 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 working certain employees in excess of five days per week.

(h) Rest Days of Extra or Furloughed Employees. To the extent unassigned or furloughed employees may be utilized under applicable rules or practices, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment.

(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.

(j) Guarantees. Except to the extent that the coverage of existing guarantees was extended to certain employees covered by Article II, Section 1(e) of the March 19, 1949 Agreement, the adoption of the "shorter work week" rule in Article II, Section 1, of that agreement did not create a guarantee of any number of hours or days of work.

It is understood and agreed that the adoption of this provision is without prejudice to the position of either party hereto regarding the question of whether or not the current agreement provides a guarantee of any number of hours or days of work per week.

(k) Overtime Provisions. Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment

to another or to or from a furloughed list, or where days off are being accumulated under Section (g) of this rule.

Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work week, except where such work is performed by an employee due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under Section (g) of this rule.

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.

(1) Work on Unassigned Days. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

RULE 61 - EMPLOYEES SUBJECT TO CALL

(a) Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

It is agreed that under the provisions of this rule the Management may, on thirty (30) days written notice to the employees involved and the General Chairman, schedule alternate interlocking repairmen and signal maintainers on one or more of the divisions to remain on call on rest days, which shall include all time from the end of the work period on Friday to the beginning of the work period on Monday. Such employees designated in the schedule to be available for call will keep the train dis-

patcher or the person designated by the Management informed as to where they can be called, and will respond promptly when called. Employees will be paid eight (8) hours pro rata rate on the rest days on which they are designated in the schedule to be available for call; and if called to perform service on such days, will be paid in addition in accordance with Rule 11. Employees not scheduled to be available for call will be relieved on rest days except where emergency conditions necessitate their being available, in which event they will be notified prior to the end of the work period of the preceding day and paid in the same manner as employees scheduled to be available.

The schedule designating positions, incumbents of which will be required to be available for call on rest days, will be prepared for a six (6) months' or longer period by the General Chairman and the General Signal Supervisor.

(b) The allowance provided in Section (a) of this rule is not applicable to employees called or notified in advance to work on rest days, or who are given the option of working on rest days.

(c) Regularly assigned signalmen required to be available for call on rest days while temporarily relieving signal maintainers or interlocking repairmen who are scheduled to be available for call on such days, in accordance with Section (a) of this rule, will be allowed minimum of eight (8) hours' compensation at rate of time and one-half.

Unassigned signalmen or assistant signalmen required to be available for call on rest days while temporarily relieving signal maintainers or interlocking repairmen who are scheduled to be available for call on such days in accordance with the provisions of Section (a) of this rule will be allowed eight (8) hours' compensation at pro rata rate.

No compensation will be allowed employees relieving signal maintainers or interlocking repairmen on rest days unless required to work or be available for call in accordance with the provisions of Section (a) of this rule.

Existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that was in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

NOTE: "Emergency" as referred to herein has reference to a present existing situation and not to anticipated future trouble.

APPENDIX "20"

UNION PACIFIC RAILROAD COMPANY
DEPARTMENT OF LABOR RELATIONS

E. R. Myers
Director of Labor Relations
Maintenance of Way, Signal

October 6, 1980

013-220-3

Mr. W. R. Evans
General Chairman, BRS
W. 2820 Broadway
Spokane, Washington 99201

Dear Sir:

Referring to the negotiations in connection with the revision of the Schedule Agreement effective November 1, 1980:

It is hereby agreed that the parties would not revise Rule 3, 40 Hour Work Week, as it appears in the above-referred-to Agreement; however, in the event vacancies occur on the twenty-eight (28) existing positions identified on the statement attached hereto on and after November 1, 1980, and the Carrier considers it necessary that some employees work either Tuesday through Saturday or Sunday through Thursday in lieu of Monday through Friday in order to meet operational requirements, the Carrier may bulletin such vacancies of maintenance employees having territorial assignments accordingly.

For every two new additional maintainer positions authorized by the Carrier on and after November 1, 1980, the Carrier may either establish one such position with rest days of Friday-Saturday or Sunday-Monday or establish a credit to convert another existing maintainer position to similar rest days when such position is vacated and rebulletined.

This agreement shall not prevent the establishment of additional assignments with rest days of other than Saturday-Sunday by mutual agreement of the parties, and requests to establish such assignments shall be given prompt consideration.

To indicate your concurrence, please affix your signature in the space provided below, returning the original for my file.

Yours truly,

/s/ E. R. Myers

AGREED:

/s/ W. R. Evans
General Chairman, BRS

Att.

STATEMENT OF 28 EXISTING
POSITIONS WHICH MAY BE CONVERTED
TO REST DAYS OF FRIDAY-SATURDAY OR
SUNDAY-MONDAY IN LIEU OF
SATURDAY-SUNDAY WHEN VACATED ON
AND AFTER NOVEMBER 1, 1980

<u>Divn</u>	<u>Location</u>	<u>Classification</u>	<u>Present Incumbent</u>
NE	Pine Bluffs	Carrier Maintainer	S. M. Fish
	Ogallala	Carrier Maintainer	J. L. Lempke
	Central City	Carrier Maintainer	W. Church
	Columbus	Carrier Maintainer	L. E. Shilling
WY	Laramie-East	Carrier Maintainer	P. Mazur
	Laramie-West	Carrier Maintainer	G. L. Lebcke
	Hanna-East	Carrier Maintainer	S. S. Thompson
	Hanna-West	Carrier Maintainer	A. D. Schuck
	Granger-East	Carrier Maintainer	R. D. Earl
	Granger-West	Carrier Maintainer	R. Pendleton, Jr
KS	Hastings	Carrier Maintainer	C. R. Miller
	Marysville	Carrier Maintainer	G. S. Feldhausen
	Kansas City	General CTC Main- tainer	M. W. Miller
	Topeka	Carrier Maintainer	C. J. Harvey
UT	Ogden	CTC Maintainer	Vacant
	Salt Lake	CTC Maintainer	R. E. Smith
	Caliente-East	CTC Maintainer	E. R. Bozarth
CA	Los Angeles	CTC Maintainer	C. J. Devenish
	Los Angeles	Interlocking Repairman	W. O. Twit
	Yermo	Carrier Maintainer	D. W. Gubler
ID	Caldwell	Carrier Maintainer	L. L. Lake
	King Hill	Carrier Maintainer	T. L. Hendricks
	Montpelier	Carrier Maintainer	W. R. Price
	Kemmerer	Carrier Maintainer	D. R. Vineyard
OR	Troutdale	CTC Maintainer	P. E. Pfeffer
	La Grande	Carrier Maintainer	L. V. Bushman
	Baker	Carrier Maintainer	C. E. Pifer
	The Dalles	Carrier Maintainer	B. H. Synon

Omaha, Nebraska
October 6, 1980

BACKGROUND:

At the time of the Claim at issue, Claimant R. C. Rocksell was employed as a Carrier Maintainer, Headquartered at Elko, Nevada. Early in 1988, Carrier scheduled signal maintainers to work on their regularly scheduled rest days on alternate weekends (i.e., twelve consecutive days beginning on Monday). Prior to the instant grievance, that arrangement was rescinded and by Bulletin No. 16 of April 20, 1988, the position of Signal Maintainer at Elko, Nevada, Gang No. 7615 was advertised by Carrier with rest days of Thursday and Friday. On May 5, 1988, Mr. Rockwell was assigned by Bulletin No. 17 to the bulletined position.

A Claim was filed by the Organization on Mr. Rockwell's behalf on May 21, 1988, and was denied by Carrier on July 8, 1988. The Claim was subsequently appealed including conference between the Parties in November 1988, after which it remained unresolved. Accordingly, it is properly before this Board for final disposition.

POSITIONS OF THE PARTIES:

ORGANIZATION: The Organization maintains that Carrier has violated Rule 3(b) and Appendix "20" of the Agreement by advertising the position of Signal Maintainer at Elko, Nevada with rest days of Thursday and Friday. It points out that since Rule 3(b) requires that where reasonable, 5-day positions shall have rest days of Saturday and Sunday, Carrier should have created relief assignments, thus complying with Rule 3(e), if it was

concerned about signal maintenance on weekends. The Organization further points out that Rule 61(a) provides a means by which Carrier can guarantee that employes remain on call of the weekends. According to the Organization, failure to comply with Rule 61(a) may fulfill Carrier's desire more economically to assure a maintainer's availability on weekends, but that such economizing must not be accomplished through violation of the Agreement.

Finally, the Organization insists that Appendix "20" of the Agreement permits Carrier to assign rest days other than Saturday/Sunday only to new additional maintenance assignments, yet Claimant's position was not a new additional assignment, but a revised version of an existing 5-day assignment. Such revision, the Organization holds, violates the second paragraph, first sentence of Appendix "20", concerning the Parties agreement "not [to] revise Rule 3, 40 Hour Work Week." It points out that not only is this not a new assignment referred to in Appendix "20", but since negotiation of that Appendix, Carrier has in fact experienced a reduction in force.

As remedy, the Organization seeks one and one-half day's pay for every Saturday or Sunday Claimant worked, and 8 hour's straight time pay for those Thursdays and Fridays he was not permitted to work.

CARRIER: For its part, Carrier asserts at the outset that Signal Maintainers have seven-day positions, since the railroad runs seven days a week and cannot do so safely if signals are not maintained all seven days. It points out that with signal

maintainers all assigned to a Monday/Friday workweek, frequently in the past no one could be found to make necessary signal repairs on weekends.

As a consequence, Carrier argues, a staggered workweek is the only way economically to ensure signal maintainer coverage for signal problems when the regularly assigned employee on a given territory is observing rest days. By assigning employees on adjacent territories staggered rest days, seven-day coverage is assured.

Further, the Company states that signal maintenance must be accomplished with budget. When the labor contract offers multiple alternatives, Carrier must look for the least cost, most efficient option. At issue, Carrier insists, is its right to employ the workforce in the most efficient way possible.

Finally, Carrier relies on Rule 3(d) to support its position. It reiterates that the work at issue is a seven-day position and Rule 3(d) specifically allows Carrier to assign consecutive rest days other than Saturday/Sunday in those positions. To buttress its argument, Carrier cites numerous NRAB decisions which it insists support Carrier's right to stagger workweeks on six- or seven-day positions.

DISCUSSION:

It is unrefuted on the record before us that the position at issue is a "five-day" position as described by Rule 3 of the Agreement. Notwithstanding Carrier's assertion that the work involved in this position occurs seven days a week, the position

was bulletined as a five-day position. Should Carrier wish to assure coverage of signal maintenance on Saturdays and Sundays by employees occupying positions so bulletined it must do so within the bounds of the Agreement. The language in Appendix "20" need not be resorted to, sine Rule 61 already provides a mechanism by which Carrier may ensure coverage on weekends and guarantee the availability of employees. As noted in this Board's Award No. 1, a plea of expense does not excuse Carrier's failure to adhere to express contract language.

In its initial denial of the Organization's Claim (July 8, 1988), Carrier specifically referred to the problem it encountered because an excessive number of assigned signal maintainers with Saturday/Sunday rest days were "opting to check out [i.e., call in as unavailable] over their rest day weekends and over holidays." The clear implication of Carrier's response is that the positions at issue were historically bulletined as five-day positions with rest days of Saturday/Sunday, and Carrier relied upon the willingness of the incumbents to be available for call to cover any necessary maintenance arising over weekends. As an increasing number of employees "checked out," Carrier sought to assure availability of employees by rescheduling Claimant to a work week which included the former rest days as regular work days. Rule 61 clearly addresses this problem as set forth in detail in this Board's Award No. 1. Under the prod of economy, Carrier chose at its peril to avoid the provisions of Rule 61.

Rule 61 is not, as Carrier argues, a "permissive" rule. The

phrase ",,,management may...", when read in context, as it must be, gives Management the right to assure availability of employees on weekends "on thirty (30) days written to the employees involved and the General Chairman." Further, employees so scheduled must be paid eight (8) hours straight time for the rest days on which they are required to be available for call, and paid in addition if they are actually called in to work. Further, the schedule designating which employees will be required to be on call on their rest days must be "prepared for a six (6) months' or longer period by the General Chairman and the General Signal Supervisor.

In view of the foregoing, the Board finds that Carrier violated Rule 61, when it unilaterally established a signal maintainer position with work days of Saturday to Wednesday. Carrier may not attempt to achieve through arbitration what it failed to achieve through negotiation. Resort to arguments of economy does not absolve Carrier of its clear contractual obligations.

The Organization has asked as remedy that Claimant be awarded one day's pay for each Thursday and Friday he was prohibited from working in addition to one and one-half day's pay for each Saturday and Sunday he was required to work. Carrier maintains that there has been no loss of earnings or damages shown in this case, and, therefore no monetary remedy is appropriate. Neither Party has offered prior awards which might be of assistance to this Board in determining a remedy in this case.

This Board is not persuaded that Claimant is entitled to a

day's pay for rescheduled rest days when he did not work. It has not been shown persuasively that a pay rate of two and one-half times his normal rate would have been appropriate in the circumstances. On the other hand, Carrier should not be free to violate the agreement with confidence that even a subsequent adverse arbitration decision will carry no liability. Such an outcome might be misconstrued as condonation, and at worst encourages the Carrier to violate the Agreement with impunity.

Had Carrier notified Claimant in advance, in accordance with Rule 61, of its need for Claimant to work Saturday and Sunday when he was on his prior schedule (work week Monday/Friday), it would have been obliged to pay him one and one-half times his hourly rate for each rest day hour worked. It is appropriate, then, that as penalty for depriving Claimant of his normal Saturday/Sunday rest days Carrier should compensate him the difference between the straight time he was paid and the time and one-half he would have received for working those days but for Carrier's contractual violation. Accordingly, Carrier shall compensate Claimant one-half day's pay for each Saturday and Sunday he was required to work under the rescheduled (Saturday/Wednesday) work week.

AWARD

Claim sustained to the extent outlined in the above Award.

CA McIlraw

Employee Member

Al Hallberg

Carrier Member

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Date:

25 February 1990