



AWARD NUMBER _____

CASE NUMBER 1

PUBLIC LAW BOARD NO. 5317

PARTIES TO DISPUTE: CSX Transportation, Inc.
(formerly SCL)
and
International Association of Machinists
and Aerospace Workers, AFL-CIO

STATEMENT OF ISSUE:

Carrier's Question at Issue:

Did the Carrier violate the Forty Hour Work Week Agreement, Rule 1 of the SCL and L&N Schedule Agreements, when the rest days of 7-day positions at Waycross and Corbin Running Repair Shops were changed to other than Saturday/Sunday?

Employees' Question at Issue:

Did CSX Transportation, Inc., violate Rule 1, but not limited thereto, of the controlling SCL and L&N Agreements when it established 5 day positions with other than Saturday/Sunday rest days to perform inspections on locomotives at Corbin, Kentucky and Waycross, Georgia during the early part of September, 1989?

OPINION OF BOARD: The basic facts of this case are not in dispute. The Louisville and Nashville Railroad (L&N) and the Seaboard Coast Line Railroad (SCL) were merged and the corporate name was changed to Seaboard System Railroad, Inc. (SSR) on December 29, 1982. Seaboard System Railroad, Inc.'s corporate name was changed to CSX Transportation, Inc. on July 1, 1986. Thus, the controlling agreements in this dispute are between the Seaboard Coast Line Railroad Company and the Louisville and Nashville Railroad Company and their Shop Craft Employees, including the IAM. Rule 1 of those Agreements, which governs hours of service, is relevant to this

dispute and reads in pertinent part as follows:

ESTABLISHMENT OF SHORTER WORK WEEK:

NOTE: The expressions "positions" and "work" when 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** - This carrier will establish, 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 carrier's 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 which follows:

(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 time, 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 paragraph (b) of this rule, and requires that some or such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, if the parties fail to agree thereon, and the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under this agreement.¹

The Carrier maintains two (2) of its largest locomotive repair shops at Waycross, Georgia and Corbin, Kentucky. Both shops operate around the clock, seven days per week and are responsible for maintaining, servicing and repairing hundreds of locomotives. Both shops provide required quarterly maintenance on a "spot line". Locomotives move from spot-to-spot being inspected and receiving specific maintenance services. Light repairs are also performed on the spot line. Both shops also operate a "fallout section" to which locomotives are moved if necessary repairs cannot be performed on the locomotive moving through the spot line.

Employees are usually either assigned to the spot line or the fallout section. However, employees with fallout assignments can and do perform work on locomotives progressing through the spot line and employees with spot line assignments can and do perform work at shop locations other than the spot to which they were assigned.

This dispute arose in August 1989 when changes were made by the Carrier in the rest days for certain spot line positions in

1

The above-quoted provision is from the Seaboard Coast Line Agreement and is essentially identical to Rule 1 in the Nashville Railroad Agreement.

both shops. In Waycross, the rest days for second shift spot line employees were changed from Friday and Saturday to Wednesday and Thursday. In Corbin, the rest days for first shift spot line employees were changed from Sunday and Monday to Thursday and Friday.

The Organization immediately protested the changes. After several attempts, the parties were unable to resolve their dispute. They subsequently agreed to forego the usual claim procedures required by the Agreements and resolve the matter through expedited arbitration in accordance with the terms of a mutually acceptable Public Law Board Agreement. The parties' dispute is now before this Board for adjudication.

The Organization maintains that the spot line positions at Waycross and Corbin are five-day positions and, therefore, the employees filling those positions must be given Saturdays and Sundays as their days off. It contends that when the spot lines were initially established, they ran seven (7) days a week. At that time, the Organization claims, the positions at issue were seven-day positions filled seven (7) days per week, and the employees occupying those positions appropriately received rest days other than Saturdays and Sundays.

In early 1989, it asserts that the Carrier advised the Local Chairman at each location that if production levels on the spot line were improved, the Carrier would provide more desirable rest days by converting the spot line to a five (5) day per week operation. According to the Organization, the Local Chairman

agreed, and each shift working the spot line began to receive either a Saturday or Sunday off each week. Even though Rule 1 provides that employees in five-day positions must receive both Saturdays and Sundays off, the Organization maintains that since the majority of the involved employees preferred their new rest days, the Local Chairman decided to accept the changes implemented by the Carrier. This decision, according to the Organization, was made at the Local level, without the involvement or approval of the relevant General Chairman and should not prejudice the Organization's position in this matter.

A few months later, after the employees had assumed their new rest days and increased production as requested, the Organization claims that the Carrier reneged on its deal and changed the rest days of employees on two (2) shifts so they no longer received a Saturday or Sunday off as rest days each week.

The Organization maintains that both Rule 1 and past practice support its contention that since spot line positions are filled only five (5) days per week, the Carrier must provide those employees with Saturdays and Sundays off each week. Rule 1 (b), it argues, explicitly provides that if the duties of a position can reasonably be met in five (5) days, the days off will be Saturday and Sunday. The Organization contends that since the duties of the spot line are now met in five (5) days, the employees must be given Saturdays and Sundays off. The Organization acknowledges that the Carrier could convert the spot line to a seven (7) day per week operation, thereby relieving itself of the obligation to give

Saturdays and Sundays off. However, the Organization maintains, as long as the spot line is operated five (5) days per week, the employees must be given weekends off. The Organization cites a number of Awards in support of its position.

The Organization also claims that its interpretation of Rule 1 is supported by more than thirty (30) years of past practice. It contends that numerous Awards have held that a practice or application of a rule which has been in existence for several years becomes a part of the Agreement and cannot be changed by either party in the absence of clear and unambiguous language to the contrary.

Here, the Organization claims that the language of Rule 1 does not clearly and unambiguously run contrary to the parties' longstanding practice and, therefore, cannot be used by the Carrier to justify changing that practice.

The Organization explicitly rejects the Carrier's contention that the positions in dispute are seven-day positions because the repair shops at issue are operated seven (7) days per week. It claims that the spot lines are separate departments which perform different tasks than the other departments in the repair shops. Although the Organization admits that spot line employees and employees in other departments of the repair shop can and sometimes do perform each others' work, it argues that this does not occur on a daily basis and does not mean that the repair shops should be viewed as a single operation.

For these reasons, the Organization asks that we find that the

employees at issue occupy five-day positions and that the carrier has violated the Agreement by not providing Saturdays and Sundays off.

The Carrier, on the other hand, maintains that the positions at issue are seven-day positions and, therefore, it is free to stagger the work week and give employees occupying those positions days off in the middle of the week. It contends that maintenance and the repair of locomotives at the Waycross and Corbin repair shops is an integrated operation which operates twenty four (24) hours per day, seven (7) days per week, three (3) shifts per day. Thus, Carrier argues, its authority to stagger the work week of individual employees with other than Saturday/Sunday rest days in order to perform these necessary repair and maintenance functions is guaranteed by paragraphs (a) and (d) of Rule 1. The right of carriers to stagger work weeks of individual employees to achieve six (6) or seven (7) day coverage, according to the Carrier, has consistently been recognized in numerous Awards for more than forty (40) years.

Carrier argues that the spot lines are not separate, isolated departments. Rather, it maintains that they are an integral part of the continuous maintenance and repair activities at the shops. Carrier claims that spot lines operate in a progressive, assembly line fashion in order to perform specific servicing, maintenance and repair functions at six (6) designated spots. The shops' other repair and maintenance tasks are usually performed on locomotives at fixed locations in the fallout section.

According to the Carrier, however, employees with fallout assignment perform work on locomotives progressing throughout the spot line and employees with spot line assignments perform work at shop locations other than the spot to which they are assigned. Thus, it argues, the spot line positions are part of a seven (7) day per week operation and it is free to stagger the work week of spot line employees and provide them with mid-week rest days.

However, even assuming for the sake of argument, that the Board finds that the spot line positions are five-day positions, Carrier contends that it is well established that the five (5) day work week assignments of employees having different duties or shift assignments may be staggered to provide seven (7) day service, provided the employees are of the same craft and seniority district. It cites a number of Awards in support of this contention. Since the employees on the spot line are in the same craft and seniority district as the other Machinists in the shop, the Carrier claims it can stagger their assignments around the clock in order to maintain the repair services it requires in each shop.

For these reasons, Carrier asks that we deny the Organization's claim and find that it did not violate the Agreement.

After reviewing the record evidence, we are convinced that the Organization's arguments must fail. It is well established that when applying Rule 1, the relevant issue is the number of days per week an operation of service is performed, and not the number of

days per week an individual employee is assigned to perform that operation or service. Thus, even if the spot lines are viewed as separate departments, the evidence demonstrates that they are not five (5) day positions.

After the challenged schedule changes were implemented at Waycross, the first shift employees were assigned to work Monday through Friday.² The second shift employees were assigned to work Friday through Tuesday. Thus, at least one (1) shift of spot line employees was assigned to work at Waycross each day of the week. The spot line positions at Waycross, therefore, must be considered a seven (7) day per week position. Thus, Carrier is free to stagger the spot line assignments and provide some employees with days off in the middle of the week.

After the challenged schedule changes were implemented at Corbin, the first shift spot line employees were assigned to work Saturday through Wednesday. The second shift employees were assigned to work Sunday through Thursday. Thus, at least one shift of spot line employees was assigned to work at Waycross six (6) days per week. Thus, at a minimum, the spot line positions at Corbin must be deemed six (6) day per week positions.

We find, however, that the spot line positions at Waycross and Corbin are not separate positions which can be viewed in isolation from the other Machinist positions in the shops. The inspection,

2

The Organization has conceded that even if the spot line positions were converted to five-day positions, Carrier is free to return them to their status as seven-day positions.

service, maintenance and repair activities performed at Waycross and Corbin are parts of a necessary integrated function performed seven (7) days per week, twenty four (24) hours a day. The spot line is an integral part of that function and cannot be viewed in isolation. Employees assigned to the spot line perform the same type of work as employees assigned to the fallout section. It is undisputed that they are part of the same class, craft and seniority district as the other Machinists who repair locomotives in the fallout sections. Moreover, it is undisputed that employees assigned to the fallout section sometimes work on the spot line and that employees assigned to the spot line sometimes work in the fallout section.³

Therefore, we find that the spot line assignments at Corbin and Waycross are seven-day positions and that the Carrier is not required to provide the employees with weekends off.

3

Since the Organization concedes that Carrier may, at any time, return the spot line assignments to seven-day positions, our finding that spot line positions can not be viewed in isolation from the other activities in the shops would be irrelevant if one of the shifts at Corbin were assigned to work Fridays. If that reassignment was made, then the spot line positions at Corbin, like the current positions at Waycross, would become seven-day positions and Carrier would not be required to provide any weekend days off.

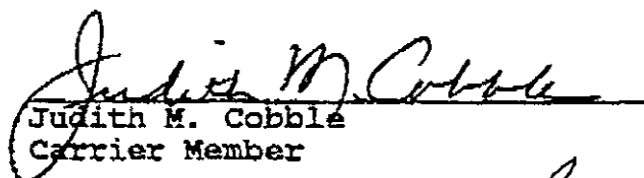
FINDINGS: The Public Law Board No. 5317 upon the whole record and all of the evidence, finds and holds:

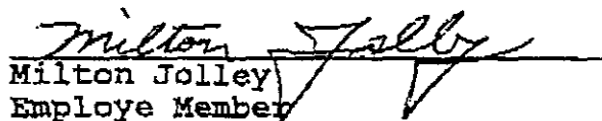
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

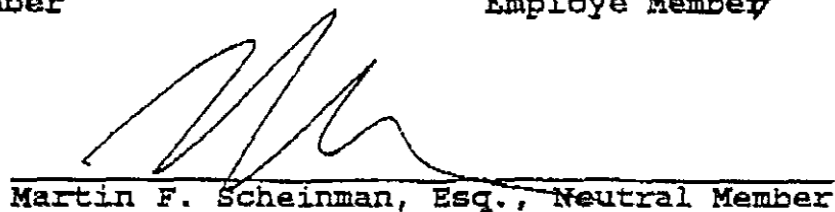
That the Public Law Board No. 5317 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


Judith M. Cobble
Carrier Member


Milton Jolley
Employee Member


Martin F. Scheinman, Esq., Neutral Member

5/6/94