

AWARD NO. 8
NMB CASE NO. 8
UNION CASE NO. S-AV-68M
COMPANY CASE NO. 11-24-148

PARTIES TO THE DISPUTE:

NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD CORPORATION

- and -

BROTHERHOOD OF RAILROAD SIGNALMEN

STATEMENT OF CLAIM:

Claim on behalf of J. D. Renfrow for payment at the overtime rate for all Saturdays worked by Claimant, from February 5, 1994, until October 29, 1994, account Carrier violated the current Signalman's Agreement, particularly Rules 15 and 51, when it changed the days off for the Claimant's position to Sunday and Monday.

OPINION OF BOARD:

The Claimant in this case is J.D. Renfrow, assigned to the position of Signal Maintainer, with headquarters at Blue Island Tower. For 10 years prior to the initial claim date the position of Blue Island Signal Maintainer worked Monday through Friday with Saturday as stand-by day and Sunday as rest day. On September 3, 1993, Carrier issued an assignment bulletin (93086-A), changing the Claimant's Blue Island Signal Maintainer position to Tuesday through Saturday with Sunday as stand-by day and Monday as rest day.

As a result of the bulletin, the Organization submitted a

position. However, on September 28, 1993, the Organization notified Carrier that it was withdrawing the aforementioned claim "without prejudice" to their position.

Subsequently, on October 8, 1993, the Organization filed a second claim, citing Carrier's "continuing violation of Agreement Rules 15 and 51" when, effective September 1, 1993, Claimant's standby days off were changed from Saturday and Sunday to Sunday and Monday.

BRS Rules 51 and Rule 15 (Section 2) state:

RULE 51. MONTHLY RATED SIGNAL MAINTAINERS:
Employees assigned to the maintenance of a territory of plant will be paid on a monthly basis.

The straight time hourly rate for monthly rated Signal Maintainers shall be determined by dividing the monthly rate by two hundred thirteen (213)* hours. Employees will be paid actual necessary expenses supported by receipts when unable to return to headquarters daily.

*Effective July 1, 1989, comprehended hours for monthly rated Signal Department employees increases from 213 to 213 2/3 hours per month.

See supplement No. 12.

No overtime is allowed for time worked in excess of eight (8) hours per day on the regularly assigned five (5) days per week the employee is scheduled to work, nor on the first scheduled rest day (6th day) of the work week or holidays; on the other hand, no time is to be deducted unless the employee lays off on his own accord.

On the regularly assigned five (5) days per week the employee is scheduled to work, ordinary maintenance and construction work

will not be required outside of his bulletined assigned hours. This does not apply to such travel time or work a Maintainer might run into when completing a certain job worked on during the day he might leave headquarters or return thereto outside his regular assigned hours.

Monthly rated employees will have Sunday as assigned rest day, if possible.

For service performed on assigned rest day, rules applicable to other employees of the same class shall apply as provided in Rule 15 and 17.

RULE 15.

SECTION 2--ESTABLISHMENT OF A SHORTER WORK WEEK:

NOTE: 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: The Carrier established effective September 1, 1949, for all employees covered by this agreement, subject to exceptions herein, a work week of forty (40) hours consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the work week may be staggered in accordance with the carrier's operational requirements; so far as practicable, the days off shall be Saturday and Sunday.

(b) FIVE DAY POSITIONS: On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

The Organization requested that first trick Blue Island Tower Signal Maintainer J. Renfrow be compensated the time and one-half rate for all Saturdays worked from September 3, 1993, until the claim was resolved. Finally, on October 17, 1993, the Organization notified Carrier that the claim dated October 8, 1993 contained an incorrect file number, and included a corrected copy of the October 8 claim with the correspondence. Carrier did not respond to the October 18, 1993 claim, and on January 12, 1994 the Organization sent Carrier correspondence asserting that, in addition to the aforementioned BRS Rules, Carrier had also violated Rule 56 of the Agreement "when it allowed 60 days to pass without responding to the corrected claim." The General Chairman of Organization maintained that the alleged time limit violation the claim should be allowed "as presented."

Carrier's Director of Labor Relations conceded that the February 1, 1994 response to the claim was outside of the sixty (60) day limit. However, Carrier went on to state that:

"Rule 15, Section 2 and Rule 51 were not violated. The language of the rules clearly does not require Saturday and Sunday to be the rest days. The change was within the Carrier's right to efficiently manage the operation.

Due to the procedural violation, Mr. Renfrow's stand-by day will be restored to Saturday and rest day restored to Sunday immediately. Mr. Renfrow will be compensated at the overtime rate for all Saturdays worked between September 4, 1993 and the date the claim was declined, February 1, 1994. any further claim is declined."

Carrier's admitted violation of the time limit on claims provision was cured by payment of the claim "as presented" from presentation date to the date of the belated but effective denial on the merits on February 1, 1994. The principles governing such questions were addressed in precedent decisions of the NRAB Third Division, including Award 3-26239. Further, Decision No. 16 of the National Disputes Committee is squarely on point with respect to the disputed procedural/timeliness aspects of this case. With respect to the merits issue, the Carrier's rescission of the work week change which precipitated the claim and restoration of the status quo ante, effective October 29, 1994, seems to obviate the merits issue grieved in this particular claim. (No opinion is expressed regarding the Organization's assertion that Carrier honored the Saturday-Sunday rest days for only one week before again imposing the revised schedule in the first week of November, 1994). The only question remaining in this particular claim is whether Carrier violated the cited Rules during the period February 5-October 29, 1994.

Rules 15 and 51 read together establish the premise that days off for monthly rated five-day positions should ordinarily be Saturday and Sunday, if possible and so far practicable in accordance with Carrier's operational requirements. Evidently, such scheduling was possible and practicable for some ten (10) years prior to the rescheduling which gave rise to this claim in October, 1993. The presumption in favor of Saturday and Sunday

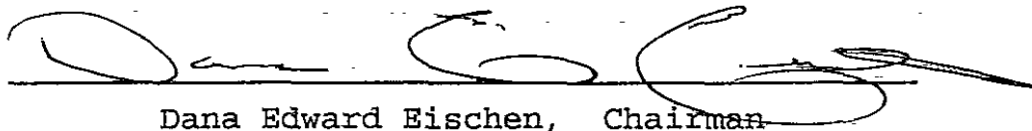
days off may be rebutted by Carrier's showing that such scheduling was no longer possible and/or practicable due to changed operational requirements. In this case, Carrier failed to meet that burden of persuasion in handling on the property. No reason for the unilateral rescheduling was even suggested by Carrier until the penultimate appeal denial of March 18, 1994 when Carrier's Labor Relations Director asserted: "[I]n September 1993, the Engineering Department, in meeting operational requirements, filed (sic) positions of a Signal Testman and Electronics Technician. Due to budgetary restrictions, no positions were added. The assignments were filled by re-assigning forces, The Corporation was within discretionary rights." Even if *arguendo*, such a bare, unsupported *non sequitur* could be considered evidentiary, the facts asserted by Carrier were refuted by the General Chairman's response of March 28, 1994: "There were no operational changes from what had been in effect in the past. The Carrier runs the same number of trains as (sic) when the days off were Saturday and Sunday as they do now with the change of days off to Sunday and Monday. Claimant's position is a five day position now the same as in the past". Carrier has failed to demonstrate that impossibility, impracticability or changes in operational requirements warranted the unilateral change from the Saturday-Sunday rest days presumptively favored by Rules 15 and 51.

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AWARD

Claim sustained.



Dana Edward Eischen, Chairman

Dated at Ithaca, New York on October 13, 1996



Union Member

Dated at

on

Chicago, IL
October 21, 1996

Company Member

Dated at

on

Chicago, IL
October 21, 1996

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DISSENT TO AWARD 8
CASE NO. 8 OF PUBLIC LAW BOARD 5565

Strong dissent to Award No. 8 of Public Law Board 5565 is essential because the Majority disregarded the Corporation's stated reason, supported by Rule 51 (MONTHLY RATED SIGNAL MAINTAINERS), for changing the **assigned rest day** on the Blue Island Tower Signal Maintainer first trick position to Monday, thereby also changing the 6th day of the workweek of such position (referred to in the claim handling "standby day," since the incumbent of the position is compensated by virtue of his monthly rate for any emergency service performed on the 6th day of his workweek as well as any emergency service necessary to be performed outside of his bulletined assigned hours). Said Rule 51 states, in part,

Monthly rated employees will have Sunday as assigned rest day, if possible....(Emphasis added)

The Corporation stated in the handling on the property, "For the record, in September of 1993 the Engineering Department, in meeting operating requirements, filed [sic] positions of a Signal Testman and Electronics Technician. Due to budgetary restrictions, no positions were added. The assignments were filled by re-assigning forces. The Corporation was within its discretionary rights."

The Corporation **was** within its discretionary rights. Two new positions had to be established for the work which needed to be performed. Budgetary restrictions did not permit adding any new positions in the Engineering Department, accordingly, such forces as existed at that time had to be reassigned, causing the resultant change in claimant's position. It was not possible to keep claimant's assigned rest day as Sunday. This reason standing alone was sufficient under Rule 51, the special rule which governs monthly-rated positions such as claimant's, to support the Corporation's action, irrespective of the fact that the Organization's allegation that the same number of trains were running as before the change on claimant's


position received no response from the Corporation.

The Majority stated, in part,

Rules 15 and 51 read together establish the premise that days off for monthly rated five-day positions should ordinarily be Saturday and Sunday, if possible and so far practicable in accordance with Carrier's operational requirements. Evidently, such scheduling was possible and practicable for some ten (10) years prior to the rescheduling which gave rise to this claim in October, 1993. The presumption in favor of Saturday and Sunday days off may be rebutted by Carrier's showing that such scheduling was no longer possible and/or practicable due to changed operational requirements....

This conclusion is erroneous. "Past practice" has nothing to do with what changes on a position might be needed at some future date. The language above quoted from Rule 51 is very broad. It does not address operational requirements or past practice. Rule 51 specifically addresses the conditions governing monthly-rated positions, the comprehended hours paid in exchange for a monthly pay rate, and so forth. While Rule 15, Section 2 cited by the Organization was not violated in this claim, as the Corporation argued, claimant's position is not and has never been a five-day position with rest days of Saturday and Sunday, or "days off" (ie., rest days) in the same sense as hourly-rated Signal positions assigned pursuant to the Forty-Hour Workweek Rule (Rule 15, Section 2).

For the above stated reasons, this Award will not be considered by the Corporation to establish a precedent.



J. E. Butler, Carrier
Member, Public Law Board 5565