Award No. 28
Docket No. 28

MOP File 380-1055-140
ORT File 990-52

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific that:

1. The Carrier violated the Agreement between the parties when, in changing the assigned rest days of J. W. Garner, Jr., Dermott, Arkansas, it permitted him to work only four days in his work week beginning April 10, 1952, and

2. The Carrier now be required to compensate Claimant Garner for one day of eight hours at the pro rata rate.

OPINION OF BOARD: This claim involves the alleged improper change in the assigned rest days of the claimant to the end that he purportedly was allowed to work only four days of a work week commencing April 10, 1952.

Immediately prior to the time in question, the claimant here was the occupant of a third trick position with a work week commencing Thursday and ending Monday, with assigned rest days of Tuesday and Wednesday. On Thursday, April 10, 1952, and pursuant to the 72-hour Notice Rule, the respondent here changed the assigned rest days to Monday and Tuesday, with the five work days of the work week being Wednesday, Thursday, Friday, Saturday and Sunday.

The Organization asserts that the work week commencing with the alleged new assignment consisted of only four work days, which contravenes the rule which provides that an assignment shall consist of five work days with two rest days and results in the claim being made here for a day's pay at the pro rata rate for the day's work allegedly lost.

The rules relied upon are hereinafter quoted:

"8-1(f) DAILY GUARANTEE: Regularly assigned employes will receive eight hours' pay within each 24 hours at rate of position occupied or to which entitled if ready for service and not used, or if required to be on duty less than eight hours, except on their assigned rest days and holidays."

"8-2(a) GENERAL: Subject to the exceptions contained in this agreement, the Carrier will establish 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 follow:"

"8-2(g) NON-CONSECUTIVE 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. * * "

"8-2(i) BEGINNING OF WORK WEEK: The term 'work week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employes shall mean a period of seven consecutive days starting with Monday."

"8-2(k) The rest days of each regular assignment (including relief assignments) shall be designated and shall be the same days each week, but may be changed to meet service requirements by giving not less than seventy-two (72) hours written notice to employes affected."

"10(e) SUSPENDING WORK: Employes will not be required to suspend work during regular hours or to absorb overtime."

The Organization takes the position Rule 8-2(i), being a guarantee rule, has the effect of giving an assigned employe a work week commencing on the first day on which the position is bulletined to work and that, by virtue of the change in assigned rest days, the claimant was not permitted or allowed to work on the Monday in question and was paid but for four days during the work week of the regular bulletined assignment, resulting in the claimant being required to suspend work within the meaning of Rule 10(e).

The Organization further pointed out that, under the provisions of the Agreement, an employe was entitled to an assignment of five work days and two rest days in each 7-day period, thus being entitled to fill a full 5-day work assignment on each week beginning with the first day the assignment was to work, and that the change of rest days for the claimant was improper here when the accomplishment thereof resulted in the loss of a rest day by the making of such day the starting day of the new work week in the new assigned work week.

The respondent took the position that the rules of the Agreement permitted it to change the assigned rest days of any position and that when such rest days were changed, the old position or assignment was, in effect, abolished and a new assignment or position created, and that the claimant here did not, in effect, lose a rest day of his assignment or position because such assignment or position no longer existed, and that the change in rest days from Tuesday and Wednesday to those of Monday and Tuesday did not result in any time lost to the claimant by virtue of the fact that the calculation of the days worked, beginning with the week before the change and running through the week following the change, indicates the number of days worked was no less than the number he would have worked had his rest days not been changed.

The respondent pointed out that the Agreement between the parties here contemplates a work week and that, while the Agreement provides that the rest days shall be consecutive, there is no contract provision requiring that the work days be consecutive; and that, if the claimant's position here is correct, it would be impossible

to change the rest days of any employe without paying a penalty for so doing, either through payment for a day not worked or payment at the punitive rate for a day worked.

There exists no dispute on relevant facts here. Each of the parties cites Third Division Awards which they assert support the position taken by each of them here. An examination of these awards discloses an irreconcilable conflict of opinion, and end result. Suffice to say here, this opinion will confine itself to an examination of existant facts and their pertinence to the rules of this agreement.

Rule 8 of the effective agreement was placed therein subsequent to the National 40-Hour Week Agreement. Rule 8, Section 2(a), General, broadly establishes the work week as five 8-hour days with two consecutive (rest) days in seven. Rule 8, Section 2(i), provides that "work week" for regularly assigned employes is contemplated to mean a "week" commencing on the first day on which any assignment is bulletined to work. It is noted that while the agreement contains a "daily guarantee" rule, it is silent as to a weekly guarantee.

It is apparent that the Organization contends that once an employe enters upon an assignment with designated days of work, the occupant of such assignment is guaranteed pay for each of the work days of that assignment and that the same (that is work days) cannot be changed unless each of the work days of the initial assignment are compensated for.

It is likewise apparent that the respondent asserts that the "work week" of any assignment may be changed without resultant penalty as long as the work week consists of "five of seven days" with two consecutive days of rest.

It is likewise evident that the parties contemplated that the "exigencies of the service" might require a change in the rest days of an assignment as evidenced by a rule permitting the unilateral change thereof without consultation with or agreement by the Organization. Therefore, it cannot be said that once the work week of an assignment, once established within the meaning of Rule 8, Section 2(i), remains rigid, and has the effect of establishing a "weekly guarantee rule".

An individual, as such, has no work week, work days or rest days assigned to him; they, that is, work weeks, work days or rest days, are an attribute of a position or assignment. The individual who occupies that assignment must, of necessity, become entitled to and bound by its characteristics.

We are of the opinion that a week as contemplated by the rules covers a period of seven days, rather than five consecutive days, and, in light of this, it cannot be said that the claimant here suffered any loss since he had five days' work with two consecutive rest days during that period, notwithstanding the change in his assignment.

In finding and holding as it has above, the Board, however, wishes at this point to clearly state that it is not its intent that this award and opinion be interpreted in a way that it is prejudicial to the rights of employes and contrary to the general intent of the agreement (example: by changing rest days and creating new assignments in a manner as to continuously deprive employes of rest days) since

the intent of any agreement of the type and nature here in question is two-fold--to protect the rights of employes covered thereby and to provide necessary operating flexibility for the Carrier.

FINDINGS: The Special Board of Adjustment No. 117, upon the whole record and all the evidence, finds and holds:

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

That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

That the Carrier did not violate the effective agreement.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
July 26, 1956