

SPECIAL BOARD OF ADJUSTMENT NO. 186

AWARD NO. 7

Organization's Files

R-938
R-940

Carrier's Files

TE-2-56
TE-4-56

STATEMENT OF CLAIM:

CASE NO. 1

"1. Carrier violated the agreement between the parties when in changing the assigned rest days of R. M. Frasher, regularly assigned incumbent of Relief Position No. 17, Texas Creek, Colorado, it improperly suspended him from work on December 20 and 21, 1955.

"2. Carrier shall now compensate R. M. Frasher for two additional days at the straight time rate."

CASE NO. 2

"1. Carrier violated the agreement between the parties when in changing the assigned rest days of J. E. Strader, regularly assigned incumbent of third shift, Texas Creek, Colorado, it improperly suspended him from work on December 18 and 19, 1955.

"2. Carrier shall now compensate J. F. Strader for two additional days at the straight time rate."

FINDINGS: The first claimant, Frasher, a regularly assigned incumbent of a relief position, was notified that effective Saturday, December 17, 1955, his rest days would be changed from Thursday and Friday to Tuesday and Wednesday and claim is here made on the ground that he was suspended from work on Tuesday, December 20 and Wednesday, December 21. The second claimant, Strader, a regularly assigned telegrapher was notified that effective Saturday, December 17, 1955, his rest days would be changed from Tuesday and Wednesday to Sunday and Monday and claim is here made on the ground that he was suspended from work on Sunday, December 18 and Monday, December 19.

Award No. 7 (Continued)

The issue here raised has been submitted to the Third Division of the Railway Adjustment Board in several dockets and conflicting and contrary awards have been made with equally competent and experienced referees participating. There appears to be no possibility of harmonizing these awards by virtue of different rules involved or any other ground. Among the awards cited for sustaining the claim are 5586 with Referee Robertson; 6519 with Referee Leiserson; 7319 with referee Carter; and 7324 with Referee Larkin; while supporting a denial of the claim are Awards 5854 with Referee Daugherty; 5998 with Referee Jasper; 6211 with Referee Shake; and 6281 with Referee Wenke.

It would serve no purpose to repeat in detail the arguments of these several awards pro and con. In making the necessary decision as between them we have been influenced by Rule 6 (I) which defines a work week as applied to regularly assigned employees as "A week beginning on the first day on which the assignment is bulletined to work." While a position may be established to begin during a work week and may be abolished effective during the work week, in the application of the rules to a position the work week must be considered as the week beginning on the first day on which the assignment is bulletined to work. The change of the rest days of claimants' assignments did not create a new assignment but did establish a new work week. Under the definition in the rule, the new work week would begin on the first day that it was bulletined to work following the change of rest days, to wit, at the beginning of the first five-day work period thereafter. Under such construction, the old work week would continue in effect until the beginning of the new one and each of the claimants here was suspended from work on two days of that week as claimed.

Award No. 7 (Continued)


Again, prior to the adoption of the 40-hour week, a similar issue existed under the rule providing for change of rest day, and as said in Award 5129, "This Division has consistently held where applicable guarantee rules were in effect, that the employee is entitled to be compensated for work which Carrier causes him to lose due to changing rest days." With such construction known, the parties agreed upon Rule 7, Subdivisions (B) and (C) which read:

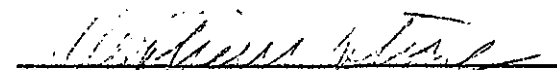
"(B) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph G of Section 1 of Rule 6.

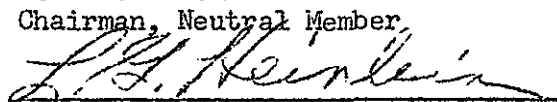
"(C) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph G of Section 1 of Rule 6."

Therein they carefully set out an exception in the case of work performed by an employee due to moving from one assignment to another or to and from an extra or furloughed list or where days off were being accumulated, but did not make any exception in the case of change of rest days of an assignment.

AWARD: Claim sustained.


R. J. Woodman
Organization Member


Mortimer Stone
Chairman, Neutral Member


L. G. Heinlein (Dissenting)
Carrier Member

Dated at Denver, Colorado, August 30, 1957.