



AWARD No. 20
CASE No. 20
ORT 1977
TE-8404

Lost and Dissent
SPECIAL BOARD OF ADJUSTMENT NO. 266
THE ORDER OF RAILROAD TELEGRAPHERS
vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

343-A-4/2-226

Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad, that:

F. L. Dougherty, regular occupant of the operator's position "Z" Office, Scranton, Pa., be paid eight (8) hours at the time and one-half rate in lieu of eight (8) hours at pro rata rate paid him for work performed on Monday, December 20, 1954, a rest day of his position.

OPINION OF BOARD:

Claimant Dougherty was the regularly assigned incumbent of a six day operator's position in "Z" Office, Scranton, with a work week of Tuesday through Saturday, and rest days on Sunday and Monday. Carrier then issued a bulletin stating that effective Monday, December 20, 1954, this position was changed to a five day position, rest days being on Saturday and Sunday. As a result, the Claimant worked from Tuesday, December 14, 1954 through Saturday, December 18, 1954 - Or five days. He was off on Sunday, December 19, a rest day but returned to work as scheduled on Monday, December 20. Thereafter he worked regularly five days per week beginning each Monday. The contention is that Monday, December 20, was one of Claimant's rest days and that therefore he was entitled to time and one-half pay for work performed on this date, instead of only straight time pay.

As this Board held in Award 3, decided on July 7, 1959, when an employee's rest days are changed, his new work week does not begin until the first work day of said new work week. Claimant Dougherty's rest days were changed in the present case by bulletin effective Monday, December 20, with the result that his new work week began on said day. This date was not a rest day since the Claimant had gone on a new work week schedule whereunder Monday was a regular work day.

AWARD:

Claim denied.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

Dissenting as shown below
W. I. Christopher, Employee Member

/s/ F. Diegtel
F. Diegtel, Carrier Member

New York, New York
July 17, 1959

days' work "in any work week." Neither does it justify a requirement that he shall work a rest day at straight time rate when the Agreement calls for time and one-half.

In a considerable number of cases similar to the one here, the Third Division of the National Railroad Adjustment Board, in sustaining such cases, has relief on the rules contained in Article 4 of the Agreement here in evidence. In Award 5807, a dispute identical with the one here, the Board (Carter) stated:

"The exceptions are available to deprive an employee of two rest days within a seven day period without penalty to the Carrier only when an employee is entitled as a matter of right to accept a new assignment and the Carrier cannot avoid a failure to assign him two rest days in seven. Awards 5113, 5421, 5464, 5494, 5805. Neither can it be argued that the authorized change of rest days affects the operation of Rules 23 (3) (b) and (c)
* * * ."

Rules 23 (3) (b) and (c) referred to are identical with those of Article 4 in this case. The Board went on to say:

"We think the reasoning of the foregoing awards clearly demonstrates that Rules 23 (3) (b) and (c) were in no manner limited in their operation as to the Claimant. Having worked six days in one work week, he is entitled to be paid at the time and one half rate for the sixth day."

The holding of the majority in this award is to the effect that Claimant's rest days were changed effective Monday, December 20 (a rest day) and inasmuch as this Monday was assigned as the first day of work in the new work week it thereupon ceased to be a rest day of the work week Tuesday through Monday. There is no basis for such a declaration. It is factual that this Monday was actually a scheduled rest day of the previous work week. The Carrier then designated it as a work day of the new work week and worked the Claimant accordingly.

A holding that Claimant's old work week terminated on Sunday, December 19, is immediately confronted with the same logic that the new work week did not begin until Tuesday, December 21. To be sure, Claimant worked Monday as a day of the new work week. In order to do so, however, he worked a rest day to which he was entitled in the previously established work week of Tuesday through Monday. There is no provision in the 40 hour week rules that declares or even suggests that one work week necessarily ceases on the day another begins. The Agreement specifies that an employee may be required to work on his rest days. That is what occurred here when the Carrier launched its changed work week.

The Agreement is positive that when an employee has worked 5 days or 40 hours in any work week he is entitled to two rest days and, further, if he is required to work on his rest days he shall be entitled to the time and one-half rate; the only exception being when moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated. None of the exceptions is present here, consequently the claim should have been sustained.

/s/ W. I. Christopher
W. I. Christopher, Employee Member

The undersigned dissents from the Opinion and Award in Case No. 20 (Award No. 20) for the following reasons:

The facts are simple. Claimant had a work week Tuesday through Monday; rest days Sunday and Monday. Carrier changed this work week to Monday through Sunday; rest days Saturday and Sunday. With this change claimant was not granted his Monday rest day of the previous work week and, instead, was required to work it. He was allowed straight time instead of the time and one-half rate due.

Article 4 of the Agreement pertinently declares that:

"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 employe 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 Article 8 of this Agreement.

Employes 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 employe 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 (b) of Section 1 of Article 8 of this Agreement."

Article 8, Section 1 (g) of the Agreement provides that:

"The typical work week is to be one with two consecutive days off, and it is the Carrier's obligation to grant this."

Section 1 (i) specifies that:

"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."

Section 1 (1):

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

Article 4 is exceedingly plain, declaring that work in excess of 40 straight time hours in ANY WORK WEEK shall be paid for at the time and one-half rate, i.e. whether in the previous work week or the new one. The Agreement also provides that the carrier is obligated to establish work weeks with two consecutive days off. When a carrier, for its own purposes, changes the rest days of an assignment it becomes mandatory for the employe to assume the work week so devised. But such arbitrary changes do not establish a valid reason why an employe shall be deprived of rest days, assured him by the agreement, after having completed five