

DISSENT TO AWARD NO. 9
SPECIAL BOARD OF ADJUSTMENT NO. 353

This claim was sustained on basis of awards relating to change in rest days. Here the change was in the starting time, which was set back 6 hours from 10:00 PM to 4:00 AM. The rest day changed only as a consequence of the change in starting time. The claimant did not lose a day as claimed since his period of work following the change was within the 24-hour period beginning at former starting time, and hence he received:

"* * a minimum of eight hours' pay within each
twenty-four (24) hour period * *."

as provided in Article 4.

Award 100 of Special Board 100 on this property denied an identical claim in which assigned starting time of a telegrapher was changed from 11:00 PM to 12:30 AM. The Employees conceded that the factual situation was the same in that award, but contended it had been reversed in later Third Division awards. The awards they cited dealt with claims where rest days were changed. That is, new assignments started at the same time of day, but on different days of the week. In only two awards cited by the Employees (5531 and 12722) was there any evidence of change in starting time and there the starting time was moved ahead and not set back, and the issue was either overtime or alleged suspension from work on a new rest day. Here the claim was not on a rest day either before or after the change, and the work was all within the same 24-hour period that would have been worked under the former starting time.

The Employees quoted Article 4, the guarantee rule, as being one of the "primary rules" involved in the dispute. They also stated claimant's "work week" was changed, but stated this "had no bearing or effect on his entitlement" to work on claim date on which they allege he was suspended, stating:

"For such suspension, Mr. Gaines is entitled to a
day's pay as claimed and as provided in the Guarantee
Rule."

Thus their whole claim was based on the guarantee rule, but they made no effort to show why it was not satisfied by the payment for time worked within the same 24-hour period in which he would have worked if there had been no change. Instead their argument was an attempt to show that the claim was valid under rule relating to the work week, despite their statement that such rule was without bearing.

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Award 100, of Board 100, was not cited by the Carrier in any of the claims before the Third Division relating to change in rest days, as a change in the starting time of day was not involved in such cases. It was not mentioned in any of the awards. Thus it has not been reversed specifically, and since the issue involved was not before the Third Division in the awards the Employees cite, it has not been reversed by decision on a similar issue as the Employees allege. It covered an identical case on this property and in my opinion it properly interprets the rules under the circumstances involved and should govern in the present case.

M. L. Erwin
M. L. Erwin, Carrier Member

