

Award No. 757

Docket No. 752

**NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee Wayne Quinlan when award was rendered.

PARTIES TO DISPUTE:

**RAILWAY PATROLMEN'S INTERNATIONAL UNION,
A. F. of L.**

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Carrier did unilaterally alter hours of service of Patrolmen on Job Nos. 37, 38, 339 and 350, Chicago Terminal, so as to neutralize, ravage and degrade seniority rights of senior employes.

(b) That Carrier cease and desist from requiring incumbents of foregoing four jobs to work shifts whose hours alternate monthly, day to night shifts and conversely, or to alternate at any other interval, until and unless by conference and negotiation suitable arrangements are mutually agreed upon, and that Carrier promptly issue appropriate order returning status of each one of these jobs to nonalternating-shift basis.

(c) Claim that all employes involved in or affected by the Agreement violation be reimbursed for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: Between petitioning Union and respondent Carrier there is a collective bargaining Agreement, effective Oct. 20, 1943, amended March 9, 1945, May 22, 1946 and Sept. 1, 1949.

Prior to June 29, 1950 and Sept. 16, 1950, these four positions, by agreement were definitely operated on a nonalternating-shift basis.

On June 29, 1950, Carrier issued two bulletins, one No. 60 announcing "Vacancy exists as for position as Patrolman No. 37", the other No. 61 announcing "Vacancy exists for position as Patrolman No. 339," both at Chicago Terminal. On Sept. 16, 1950, Carrier issued two more bulletins, one No. 99 announcing "Vacancy exists for position as Patrolmen No. 350," and the other, No. 100, announcing "Vacancy exists for position as Patrolman No. 38," both at Chicago Terminal. Each one of the foregoing four bulletins, under heading "HOURS OF SERVICE", contained a new requirement, namely: "Alternating monthly."

The first paragraph of the PREAMBLE of the current Agreement reads:

"The parties hereto, recognizing the duties and responsibilities devolving upon each, proclaim it to be the purpose of this agreement to establish fair and reasonable working conditions for employes

covered thereby and to assure loyal protection to the personnel and property of and in custody of the Illinois Central Railroad Company.” (Underscoring supplied)

This Board is fully cognizant of the statutory requirements that “Carriers . . . shall give at least thirty days’ written notice of an intended change in agreements affecting rates of pay, rules, or working conditions . . .” (Underscoring ours)

Rule 1—Scope, Paragraph (a) reads:

“(a) This agreement shall apply to the specific positions of special officers and patrolmen, including extra or temporary patrolmen; referred to hereinafter as patrolmen.” (Underscoring inserted)

Rule 8(c)—HOURS OF SERVICE—reads in part:

“The starting time for relief assignments may be different from day to day.” (Underscoring inserted)

We the Employes submit that nowhere in the Agreement, except as above-quoted Rule 8(c), is there provision granting Carrier the right to place hours on any kind of alternating basis, and in which instance, it will be noted, is strictly and specifically limited to “relief assignments.” We the Employes wherefore also submit that if Agreement intended such right, right to change hours of regular assignments, should at any time be extended to regular assignments, it would have so stated. Since the right was not extended to regular assignments, then it is manifestly a violation of the Agreement for Carrier to take the liberty to unilaterally so extend it as it did in four instances here at issue.

Rule 17—TERMINATION, of the Agreement reads:

“This agreement shall be effective October 20, 1943, as amended March 9, 1945, May 22, 1946, and September 1, 1949, and shall continue in effect until changed in accordance with the provisions of the Railway Labor Act.”

POSITION OF EMPLOYES: The past conduct of this Carrier, see Fourth Division Awards No. 637, 638, 726, 727, and 728, discount any attempted contention that it is not intent on dissipating the bargain rights of the Railway Patrolmen’s International Union. Its skill at setting up fake excuses, its proneness to indulge in vicious intrigues and finaglings to discourage and destroy collective bargaining within its Police Department is of such proportions as to call for special institution of appropriate corrective measures to control.

The Employes have demonstrated that the established “hours of employment” of the four positions in dispute, on the properties are contemplated by, and confirmed “Working conditions” established under the current Agreement.

Carrier will not pretend to have given representative of Employes notice prior to posting of its Bulletins 60, 61, 99, or 100. And no claim is made that any notice or suggestion for a conference on this change of working conditions emanated from the Carrier.

That changes in hours of employment from month-in-and-month-out non-alternating basis to hours “Alternating Monthly” basis, are material changes in working conditions is a self-proving proposition. Any assertion to the contrary would be fantastic and absurd. By placing these positions on hours “alternating monthly” basis this Carrier did neutralize rights of senior employes, thus depriving them of the right to permanently work day shifts if they

so desired, and this Carrier did thereby disrupt the prevailing system of regularly established and assigned positions under which the Employees were individually entitled to the particular job to each man by reason of his seniority, by the roster, and by the bulletining provisions of the Agreement. Employees submit, wherefore, that the change instituted by mandate of Carrier, hours "Alternating Monthly" as contained in afore-cited bulletins (See accompanying Exhibits Nos. 1, 2, 3(b), and 4(b)) could not properly be exacted of employes without negotiation and agreement.

In the Rules, "General Duties"—Duty of carriers and employes to settle disputes pursuant to Section 2 of the Railway Labor Act as amended, (Title 45 USCA 152) "Collective Bargaining," is HELD:

"Collective bargaining," though not defined in this chapter, generally has been considered to absorb and give statutory approval to philosophy of bargaining as worked out in the labor movement in United States, and to include right of representatives of employes' units to be consulted and to bargain upon the exceptions as well as the routine rates, rules, and working conditions. Order of Railroad Telegraphers v. Railway Express Agency, Ga. 1944, 64 S. Ct. 582, 321 U. S. 342, 88 L. Ed 788. (Underscoring supplied)

Also (Title 45 USCA 152) "Agreements—Duty of Parties to Make," is HELD:

"This chapter places upon carriers and employees duty of exerting every reasonable effort to settle disputes by agreement and prohibits carrier from altering rates of pay, rules, or working conditions except in manner provided by agreement or by this chapter. Shipley v. Pittsburgh & L. E. R. Co., D.C.Pa. 1946, 68 F. Supp. 395, modified on other grounds 70 F. Supp. 870.

Prima facie evidence that back in 1945 this Carrier by and of itself understood that such changes as here in dispute could not properly be exacted of employes without negotiation and agreement is submitted in accompanying Exhibit No. 12. This exhibit is a copy of a memorandum agreement dated New Orleans, La. June 13, 1945.

Attention of the Board is directed to accompanying Exhibit Nos. 3(a) and 4(a), same being copies of prior bulletins issued on position Nos. 38 and 350, wherein in each instance incumbent was not at that time required to work hours "Alternating Monthly." Exhibit Nos. 5 to 11 inclusive are copies of correspondence exchanged between representatives of Employees and Management attempting to effect settlement.

Material change in hours of service, such as we have here, once they have been established by the Carrier and assigned as elements of positions to employes, are changes in the working conditions covered by the Agreement between the parties. To require employes senior in point of service to take turns with employes junior in service at working night shifts, are such material changes in their working conditions as must be preceded by the notice and conference required by the Railway Labor Act.

The facts and arguments herein presented have been made known to representatives of the Carrier in conference or by correspondence.

We, the Employes, respectfully urge that this claim in its entirety be sustained. Oral hearing is requested.

CARRIER'S STATEMENT OF FACTS: The following bulletins were posted to the employes of the Chief Special Agent's Department on June 29, 1950, and September 16, 1950:

"BULLETIN NO. 60

Chicago, June 29, 1950

TO: All Patrolmen, Chicago Terminal

POSITION: Vacancy exists for position as Patrolman No. 37, Chicago Terminal, with headquarters at Central Station, Uniform required.

HOURS OF SERVICE: 9:00 A. M. to 6:00 P. M., D.S.T., and 6:00 P. M. to 3:00 A. M., D.S.T. (Alternating monthly)

BRIEF DESCRIPTION OF DUTIES: Patrolling Chicago Terminal; conducting investigations; special assignments; and all other general railroad police duties assigned.

REQUIREMENTS: Must be experienced driver (hold current driver's license); must be in good physical condition in order to participate in strenuous physical activity; must be capable of typing reports; and capable of conducting complete and thorough investigations.

APPLICATIONS: Will be accepted by the undersigned, in writing, until 12 o'clock noon, July 4th, 1950.

DATE POSTED June 29th, 1950.

F. S. Bloden
Special Agent."

"BULLETIN NO. 61

Chicago, June 29, 1950

TO: All Patrolmen, Chicago Terminal.

POSITION: Vacancy exists for position as Patrolman No. 339, Chicago Terminal, with headquarters at Central Station. Uniform required.

HOURS OF SERVICE 9:00 A. M. to 6:00 P. M., D.S.T., and 6:00 P. M. to 3:00 A. M., D.S.T. (Alternating monthly)

BRIEF DESCRIPTION OF DUTIES: Patrolling Chicago Terminal; conducting investigations; special assignments; and all other general railroad police duties assigned.

REQUIREMENTS: Must be an experienced driver (hold current driver's license); must be in good physical condition in order to participate in strenuous physical activity; must be capable of typing reports; and capable of conducting complete and thorough investigations.

APPLICATIONS: Will be accepted by the undersigned, in writing until 12 o'clock noon, July 4th, 1950.

DATE POSTED: June 29th, 1950.

F. S. Bloden
Special Agent."

"BULLETIN NO. 99

Chicago, September 16, 1950

TO: All Patrolmen, Chicago Terminal.

POSITION: Vacancy exists for position as Patrolman No. 350, Chicago Terminal, with headquarters at Central Station. Uniform required.

HOURS OF SERVICE: 6:00 P. M. to 3:00 A. M. and 9:00 A. M. to 6:00 P. M. (DST). Alternating monthly.

BRIEF DESCRIPTION OF DUTIES: Patrolling Chicago Terminal; conducting investigations; special assignments; and all other general railroad police duties assigned.

REQUIREMENTS: Must be experienced driver (hold current driver's license); must be in good physical condition in order to participate in strenuous physical activity; must be capable of typing reports; and capable of conducting complete and thorough investigations.

APPLICATIONS: Will be accepted by the undersigned, in writing, until 12 o'clock noon, September 23rd, 1950.

DATE POSTED: September 18, 1950.

F. S. Bloden
Special Agent."

"BULLETIN NO. 100

Chicago, September 16, 1950

TO: All Patrolmen, Chicago Terminal .

POSITION: Vacancy exists for position as Patrolman No. 38, Chicago Terminal, with headquarters at Central Station. Uniform required.

HOURS OF SERVICE: 6:00 P. M. to 3:00 A. M. and 9:00 A. M. to 6:00 P. M. (DST). Alternating monthly.

BRIEF DESCRIPTION OF DUTIES: Patrolling Chicago Terminal; conducting investigations; special assignments; and all other general railroad police duties assigned.

REQUIREMENTS: Must be experienced driver (hold current driver's license); must be in good physical condition in order to participate in strenuous physical activity, must be capable of typing reports; and capable of conducting complete and thorough investigations.

APPLICATIONS: Will be accepted by the undersigned, in writing, until 12 o'clock noon, September 23rd, 1950.

DATE POSTED: September 18th, 1950.

F. S. Bloden
Special Agent."

These were new positions established primarily for the purpose of patrolling in a squad car. No such positions had ever existed in Chicago prior to their establishment. Although the Chief Special Agent's Department at Chicago has had an automobile assigned to it for some time, no one has been specifically assigned to the car. With their establishment, the occupants of Positions Nos. 37 and 339 worked as one team and the occupants of Positions No. 38 and 350 as another team. As stated in the "description of duties" of these positions, the primary duties attached to them are patrolling, conducting investigations and handling special assignments. The conducting of investigations and many of the special assignments involve checking records of local civic law enforcement bodies, and in order to best qualify for the performance of the duties on these positions, it is necessary that the patrolmen be familiar with problems and situations that arise at all times during the day and night. It was impossible for a patrolman assigned exclusively to night duty to become familiar with the record division of the local police force, thus placing him at a disadvantage. The following correspondence was exchanged in the handling of this dispute on the property:

"November 13, 1950

Mr. F. S. Bloden
Special Agent
Illinois Central
135 East Eleventh Place
Chicago 5, Illinois

Dear Sir:

Due to the facts that the incumbents of positions 37, 38, 339, and 350 are required to alternate their hours of service, it is hereby requested that you credit each of these patrolmen with one (1) day's work, for each time they change from the night to the day shift, and that the time already earned be given them immediately.

Rule 8, Sec. (b) reads in part as follows—"Rest days shall not be less than an average of two per week per year". Rest days in this section mean full rest days.

Rule 8, Sec. (c) reads in part as follows: "The starting time for relief assignments may differ from day to day". No other position's starting time may differ, or why was it necessary to incorporate this part of Rule 8 Sec. (c) ?

Trusting that you will take care of this matter immediately, I am

Very truly yours,

/s/ W. A. Horton
General Chairman I C. Patrolmen."

"Chicago, Illinois,
Nov. 25, 1950

Mr. W. A. Horton,
Genl. Chairman,
743 Velma Street,
Memphis 4, Tenn.

Dear Sir:

Reference is made to your letter of November 13 concerning alternating of hours between positions 37, 38 and 339 and 350.

You may rest assured that the provisions of Rule 8, section (b) will be complied with and that these men will receive an average of

two days per week rest days each year. There of course could not possibly be any violation of this rule to date since the man filling the positions have not yet alternated their hours, and it will take a full year to carry out the provisions of section (b).

I do not believe Rule 8, section (c) has any bearing on the question of alternating hours and further, this agreement is in line with established precedent in all progressive law enforcement agencies. I am sure that you want to assist in helping us inaugurate procedures in this department which will earn our men the distinction of being employed by a first class law enforcement outfit.

Yours truly,

/s/ F. S. Bloden
Special Agent."

"December 8, 1950

Mr. Delbert L. Wood
Chief Special Agent
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

Dear Sir:

I am appealing to you the decision of Special Agent Bloden in connection with a grievance filed by me with him on November 13, 1950 concerning incumbents of positions Nos. 37, 38, 339 and 350.

The present plan of alternating the hours on these positions do not give the men an average of two full rest days per week per year. We object very much to a plan whereby a man will receive one and two thirds rest days one week and a month later receive two and one third rest days.

It is my request you reverse the decision of Special Agent Bloden and order all men, who may have at the date of your order changed from the night shift to the day shift under the present alternating hours, compensated for the rest day that was denied them.

A copy of all correspondence concerned is attached for your convenience.

Respectfully,

/s/ W. A. Horton
General Chairman I.C. Patrolmen."

"December 12, 1950

Re: Positions No. 37, 38, 339-350, Chicago Terminal.

Mr. W. A. Horton,
743 Velma Street,
Memphis 4, Tennessee.

Dear Sir:

Reference is made to your letter of December 8, 1950 in which you have made a protest as to the decision of Special Agent Fred Bloden in connection with the above captioned jobs.

I have studied your letter and Special Agent Bloden's letter to you dated November 25, 1950.

I cannot see how we have in any way violated the Agreement of the Patrolmen's Union in connection with the establishment of Jobs 37, 38, 339 and 350, and therefore must go along with Special Agent Bloden in this matter.

Yours very truly,

/s/ Delbert L. Wood
Chief Special Agent."

"December 18, 1950

Mr. E. H. Hallmann
Manager of Personnel
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

Dear Sir:

I am appealing to you the decision of Chief Special Agent D. L. Wood dated December 12, 1950 in which he refuses to reverse the decision of Special Agent F. S. Bloden in not allowing patrolmen on positions 37, 38, 339, and 350 two full rest days per week per year.

It is my request you reverse the decision of Chief Special Agent D. L. Wood in this matter. Copies of all the correspondence in connection with the case are attached hereto for your convenience.

Respectfully,

/s/ W. A. Horton
General Chairman I.C. Patrolmen."

"January 25, 1951

Mr. W. A. Horton, General Chairman
Railway Patrolmen's International Union
743 Velma Street
Memphis 4, Tennessee

Dear Sir:

Refer to your letter December 18, 1950, appealing the decision of Chief Special Agent D. L. Wood in regard to protest concerning the allowance of two full rest days per week per year to patrolmen on positions 37, 38, 339 and 350.

Our investigation of this matter developed that the patrolmen working these positions are on a rotating basis, i.e., one month days and one month nights, and in the event there is any rest time lost by the night men, when making the change over, it is regained when they again change the following month. A close check on our records indicates that the patrolmen on these positions are receiving rest days of not less than an average of two per week, in accordance with Rule 8 (b) of the schedule agreement. For example the patrolman on Position No. 350 had a total of 22 rest days during the last 2½ months.

In view of this information I am unable to determine any cause for protest, and unless you are able to produce some evidence that the agreement has been violated, I must necessarily agree with the decisions already rendered in this matter.

Yours truly,

/s/ E. H. Hallmann."

The agreement between the parties effective October 20, 1943, and as subsequently amended, is by reference made a part hereof.

POSITION OF CARRIER: Rule 5 (a) of the currently effective agreement captioned, "OPTION TO POSITION", reads as follows:

"(a) New positions and permanent vacancies shall be bulletined for a period of five (5) days in the district where they occur. Temporary vacancies of more than thirty (30) days' duration shall be bulletined as such. New positions or vacancies of less than thirty (30) days' duration need not be bulletined. Employees desiring such positions must file application in writing with officer issuing bulletin prior to the expiration of the bulletin, and award will be made within five (5) days, subject to provisions of Rule 2."

and Rule 8 of the currently effective agreement captioned, "HOURS OF SERVICE", reads as follows:

"(a) Exclusive of road patrolmen or patrolmen at outlying points or patrolmen on positions where requirements of the service necessitate non-continuous assignments, eight (8) continuous hours with an allowance of not to exceed twenty (20) minutes in which to eat without deduction in time therefor, or with a meal period of not less than thirty (30) minutes nor more than one (1) hour, which shall not be counted as service time, shall constitute a day's work. Where meal period is allowed it shall be between the end of the fourth and beginning of the seventh hour. (AM. 3-9-45)

(b) Rest days shall not be less than an average of two per week per year. The relief days on positions represented daily shall be on a rotating basis to the fullest extent practicable, consistent with carrier's operational requirements. Where the relief day is not on a rotating basis, it will be designated by the supervising officer (AM. 9-1-49)

(c) Where it is necessary for positions to be represented daily, relief assignments shall be established per provisions of Rule 5 (a), excepting where five (5) days' work in seven (7) is not provided, in which event positions may be filled by extra men or blanked. The starting time for relief assignments may be different from day to day. The rest period between such relief assignments shall not be less than eight (8) hours. (AM 9-1-49)

(d) No assignment shall be started between 12:01 A.M. and 6:00 A.M., except in case of emergency.

(e) Except as otherwise provided in this agreement, a work week of forty (40) hours shall consist of five (5) days of eight (8) hours each with two (2) days off in seven (7). The days off shall be consecutive to the fullest extent practicable, consistent with carrier's operational requirements. (AM. 9-1-49).

(f) Outlying Positions—Variance from an assignment of eight hours per day for road patrolmen or patrolmen with unassigned

hours is permissible, provided the aggregate hours comprehended in their monthly assignment does not exceed 174 hours (AM. 9-1-49)"

Reference to paragraph (b), supra, discloses that, "Rest days shall not be less than an "average of two per week per year." For one year or 365 days, a patrolman would receive 104 rest days, and the claimants, for the remaining portion of the year 1950 after they were assigned to these positions, received in excess of this average. When the day patrolmen change over to night hours, they report off duty at 6:00 P. M. and report for duty on the third day at 6:00 P. M. The night men, when changing, report off duty 1:30 A. M., and again report for duty on the second day at 9:00 A. M.

There is no rule in the applicable agreement which prohibits the establishment of assignments such as we have here, and as explained by the Chief Special Agent, the alternating hours of service is an established police practice in law enforcement agencies throughout the country.

It is the position of the Carrier that:

1. There has been no violation of the agreement.
2. The rules of the agreement specifically provide for assignments exactly as established in this case.
3. Since there has been no violation of the contractual requirements of the agreement, there cannot be a dispute.
4. The Carrier, therefore, requests that the request of the Employees be declined.

All data in support of the Carrier's position have been presented to the Employees in correspondence or discussion in conference and are made a part of the question in dispute.

Oral hearing is desired.

(Exhibits are not reproduced).

OPINION OF BOARD: On June 29, 1950, two bulletins were issued by the Carrier, announcing vacancies for positions as Patrolmen Nos. 37 and 339 with hours of service on each alternating monthly. On September 16, 1950, two more bulletins were issued announcing vacancies for positions as Patrolmen Nos. 350 and 38, also containing a provision that the hours would alternate monthly.

The discussions on the property were instituted in a letter by Mr. W. A. Horton, General Chairman, I. C. Patrolmen, to Mr. F. S. Bloden, Special Agent, Illinois Central, under date of November 13, 1950, in which the request was made that the Patrolmen holding positions 37, 38, 339 and 350 be credited with one (1) day's work, for each time they changed from the night to the day shift, and that the time already earned be given them immediately. Reference was therein made to Rule 8 (b) and (c) in support of the Union's claim previously stated. The claim was processed up through the proper Company officials with emphasis on Rule 8 (b), which reads in part: "Rest days shall not be less than an average of two per week per year." The Union's position was that the men were entitled to two full rest days per week per year. The Carrier claimed this rule meant an average of not less than two rest days per week and that this rule was being complied with accordingly. The claim above set forth and the stated positions of the respective parties constitute the grievance as it was discussed on the property.

The Union thereafter filed an Ex-Parte Submission with this Division and in its statement claimed that the Carrier's action in unilaterally altering the hours of service on the four Patrolmen's jobs in question "neutralized,

ravaged and degraded seniority rights of senior employes"; that the Carrier desist from requiring the incumbents on those jobs to work alternating shifts "until and unless by conference and negotiation suitable arrangements are mutually agreed upon; and that Carrier promptly issue appropriate order returning status of each one of these jobs to nonalternating shift basis." Employes also asked that all employes affected by "the Agreement violation" be reimbursed for all losses sustained.

Title I, (Section 2, of the Railway Labor Act sets forth its General Purposes, and lists as Number 5 "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions", and, in enumerating the duties of carriers and employes, lists as second "all disputes between a carrier and its or their employes shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute."

This Board must be guided by the expressed policy of the Railway Labor Act and, of course, should expect the parties to discharge their respective duties thereunder to contribute to an orderly settlement of disputes.

In the present instance, the Board has before it a claim based on a grievance which is basically a different grievance from that discussed on the property. This procedure does not contribute to an orderly settlement of disputes as provided for in the Act as it obviously does not permit the opportunities for settlement to be fully explored by the parties in their discussions on the property prior to processing the case to this Division.

The Board, therefore, feels that it cannot properly assume jurisdiction and pass on the merits of the case. Accordingly, we hold that the claim should be dismissed without prejudice to the Organization's right to institute a new claim through proper channels if it so desires.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 11th day of January, 1952.