

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**NEW YORK CENTRAL RAILROAD CO.—LINES
WEST OF BUFFALO**

STATEMENT OF CLAIM: "Claim of Signal Maintainer W. R. Frederick for payment at time and one-half rate for all service performed on Sundays from February 1, 1932, to June 16, 1932, while assigned as first trick signal maintainer at 'Z' Tower; from June 16, 1932, to January 16, 1933, while assigned as first trick maintainer at Broadway interlocker; from July 1, 1934, while assigned as first trick signal maintainer on maintenance section 504.

"Claim of Signal Maintainer W. C. Harms for payment at rate of time and one-half for all service performed on Sundays from May 20, 1934, to April 30, 1936, while assigned as first trick signal maintainer on maintenance section 501."

JOINT STATEMENT OF FACTS: "Signal Maintainer W. R. Frederick is employed on the Toledo Division of The New York Central Railroad Company. During the period from February 1, 1932, to June 16, 1932, he was assigned as first trick maintainer on Section T-4, with headquarters at 'Z' Tower except on Friday night when he was assigned to third trick at Nasby Tower on Section T-3. During the period from June 16, 1932, to January 16, 1933, Mr. Frederick was assigned as first trick maintainer on section 501, with headquarters at Broadway Tower. Since July 1, 1934, Mr. Frederick has been assigned as first trick maintainer on maintenance section 504, with headquarters at Alexis and Nasby Towers.

"Signal Maintainer W. C. Harms is also employed on the Toledo Division. From May 20, 1934, to April 30, 1936, he was assigned as first trick maintainer on maintenance section 501, with headquarters at Oakdale Tower."

There is in evidence an agreement between the parties bearing effective date of May 1, 1929, and the Employees submit and rely on Rule 16 thereof in support of the claims in this case, reading—

"Rule No. 16 (Decision 1538).

Sunday Work—Full Day Period.

Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off in seven, Sunday if possible, and if required to work on such

Prior to February 1, 1932, the signal maintenance territory in Toledo Yard and vicinity was divided into five sections—T-1, T-2, T-3, T-4, T-5. The men were assigned on the basis of one day off per week and such of them as were assigned to work on Sundays were paid straight time rates for the Sunday assignments. Effective February 1, 1932, the territory was divided into four sections, T-1, T-2, T-3, and T-4. The one day off per week assignments continued in effect and such of the men as were assigned to work on Sundays were paid straight time rates for the Sunday assignments. Effective June 22, 1932, the territory was divided into two sections (Nos. 501 and 504), which division of territory is still in effect.

The one-day-off-per-week assignments were continued in effect until July 1, 1932, at which time the men were assigned on the basis of two days off per week on a staggered schedule. On December 13, 1932, the working days of the individuals were further reduced to four per week on a staggered schedule, and these reduced assignments continued in effect until May 16, 1934, when the two days off per week arrangement on a staggered schedule was restored. They have been continued on this basis since the latter date.

While the employees involved in this dispute are required to report for work at a definite location or headquarters, they do not devote all of their time to that specific location, but work at any point on the section where their services are required. They are assigned to definite tours of duty, not to specific positions.

The employees contend in this submission that Frederick and Harms "should be paid at the rate of time and one-half for all Sunday service performed, by virtue of the fact that the Carrier has seen fit, through force reduction, short work-week, and rearrangement of positions, to discontinue the application of Rule 16 of the New York Central Agreement as applied on other properties insofar as interpretation and general practice regarding the 'continuous operation' feature of this rule is involved."

This contention is misleading so far as it relates to the facts and circumstances which brought about the staggered assignments. During the period of the depression this railroad, as well as all others in the country, found it imperative to make drastic reductions in payroll expense. Force reductions were made, and later on, in keeping with the nationwide desire to spread employment, the short work-week was resorted to. Obviously, this necessitated a rearrangement of assignments.

Various decisions of arbitration boards and awards of the Third Division cited by the employees are reviewed as showing that the work involved is not comparable with the work of employees in the instant case and that those decisions should have no weight here.

OPINION OF BOARD: In the instant case Rule 16, effective June 1, 1923, applied thereafter to the signal maintenance work on signal sections T-1, T-2, T-3, T-4, and T-5, Toledo, Ohio, without change in those sections or the employees' assignments thereon that resulted in question being raised as to proper application of that rule until the period of this claim. On February 1, 1932, changes in the sections were made, the five sections being rearranged and divided into four sections, T-1, T-2, T-3 and T-4. Subsequently on June 22, 1932, the territory was again rearranged and divided into Sections, Nos. 501 and 504, which division of territory remains in effect. These rearrangements were incident to reductions in force and ultimately resulted in spreading employment by shortening the work-week.

One of the two claimants in this case, Signal Maintainer Frederick, prior to February 1, 1932, was on a 7-day assignment with a regularly assigned seventh day off duty, relief employee filling the assignment on the off-duty day. Thereafter he was until June 16, 1932, working five days per week on new section T-4 with headquarters at "Z" Tower four days and Nashby Tower one day. Thereafter, until June 22, 1932, he continued working 5

days per week on section T-3 with headquarters at Broadway Tower, and when on that date Section T-3 became part of Section 501, he continued to work five days per week until December 13, 1932, and thereafter four days per week with same headquarters until January 16, 1933. From July 1, 1934, to date he worked 5 days per week on Section 504 with headquarters at Alexis and Nasby Towers.

Signal Maintainer Harms, the other claimant, was assigned May 20, 1934, (after the sections had been reduced to two sections, 501 and 504) to work the first trick position five days per week on section 501 with headquarters at Oakdale Tower. Prior to February 1, 1932, the first trick position at Oakdale Tower was a 7-day assignment, with an off-duty day filled by a relief assignment. Harms continued from May 20, 1934, to April 30, 1936, on this assignment working 5 days per week.

The record provides evidence that during the period of the depression the Carrier found it necessary to reduce its expenses which was accomplished by reductions in force and by the adoption of a short work-week to spread employment. The rearranging of territories and assignments of signal department forces was inaugurated by Carrier in an effort to meet the service requirement.

Such assignments do not permit pro rata payment for Sunday work. The employes protested the application being given Rule 16, and on September 3, 1935, presented claims in behalf of the two employes involved in this dispute.

In the opinion of the Board the pro rata payment to signal maintainers Harms and Frederick for Sunday work as first trick maintainers on respective sections 501 and 504 since September 3, 1935, the date when claims were presented in their behalf, is in violation of the provisions of Rule 16.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and 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 Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That in view of the facts in evidence the pro rata payment to Signal Maintainers Harms and Frederick for Sunday work as first trick maintainers on respective Sections 501 and 504 since September 3, 1935, is in violation of Rule 16.

AWARD

Claim of Signal Maintainer Frederick for time and one-half rate for service performed on Sundays as first trick signal maintainer on section 504 from September 3, 1935, is sustained.

Claim of Signal Maintainer W. C. Harms for time and one-half rate for services performed on Sundays as first trick signal maintainer on Section 501 from September 3, 1935, to April 30, 1936, is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 3rd day of December, 1937.