

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim that W. C. Ashford be compensated at the rate of time and one-half time for all time held for service by direction of Signal Supervisor N. S. Lynch, from 8:00 P. M., December 23, 1939 to 7:30 P. M., December 24, 1939; total amount of claim being compensation for a period of 23½ hours at the rate of time and one-half time."

EMPLOYEES' STATEMENT OF FACTS: "During the time involved in this claim, W. C. Ashford held a regularly assigned position in signal maintenance on the Missouri Pacific Railroad, Kansas City Terminal Division, with headquarters located at the Topping Avenue Interlocking Plant in Kansas City, Missouri. On Saturday, December 23, 1939, he advised his superior, Signal Supervisor N. S. Lynch, as provided for in Rule 3 (n) of the current agreement, that he would be absent from his home station after the end of his regular working hours on Saturday, December 23 through the 24th and 25th, the two latter dates being a Sunday and holiday, and requested permission to also be away for the regular working day of December 26, 1939. To this request Mr. Lynch replied that an approaching storm had been reported and that he, Ashford could not be permitted to absent himself from his home station and would be expected to hold himself available for service.

"At 7:30 P. M., December 24, 1939, Signal Supervisor N. S. Lynch advised Ashford that at that time he was released from the instructions of the previous day and was then permitted to absent himself from his home station, with the information that he would be permitted to be away from his assignment during the regular working periods of December 26 and 27, 1939.

"Mr. Ashford, like all other employees in the signal department of the Missouri Pacific Railroad, is subject to the provisions of the agreement between the Missouri Pacific Railroad Company and the Brotherhood of Railroad Signalmen of America in respect to rates of pay, hours of service and working conditions.

"Rule 3 (n) of that agreement provides that maintenance employees must notify the management if they expect to be away from their home station or section outside of regular working hours but does not provide that such employees shall secure permission to so absent themselves. The rule reads as follows:

'Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management where they may be

in event an emergency situation arises. The rule was never intended to apply to employees who asked for leaves of absence—this is a matter covered by Rule 7 quoted in Carrier's statement of facts.

"The Employees, in the presentation of the case to the Management, built their claim for monetary allowance for Ashford on Rule 3-(n) only, for the reason, as we understand it, that Ashford was not permitted to go away on his leave of absence as he expected on Sunday, December 24th and because the signal supervisor told him that adverse weather conditions would not permit of his being away; then the Employees attempt to invoke the provisions of Rule 3-(n) and ask that Ashford be paid because the supervisor would not let Ashford go down in Arkansas and leave his territory on Sunday and the following day, Christmas. The signal supervisor had no intention of denying Ashford the working conditions set forth in Rule 3-(n) on either Sunday, December 24th or the following day, December 25th, as is evidenced by Mr. Lynch's statement dated February 20, 1940 (Carrier's Exhibit 'A').

"Rule 7 is, as stated in Carrier's statement of facts, the only rule in the wage schedule agreement that applies to leaves of absence, and this rule states specifically that employees will, upon request, be granted a leave of absence when the requirement of the service permits. Ashford asked for a leave and his request was granted when the requirements of the service permitted.

"There is no rule nor practice under the rules of our wage schedule agreement with the Signalmen dated September 1, 1939 that would support the Employees' claim."

OPINION OF BOARD: The record in this case shows that W. C. Ashford held a regularly assigned position in signal maintenance on the Missouri Pacific Railroad Company with headquarters at Kansas City, Mo. His regular service assignment covered eight hours each day exclusive of the meal period except Sundays and the holidays listed in the current agreement. During the 16 hours of each working day and the 24 hours of each Sunday and the holidays listed Ashford is subject to calls for emergencies that may arise under the provisions of Rule 3 (n).

On Saturday, December 23rd, 1939, Ashford advised Supervisor Lynch that he would be absent from his home station at the end of his working day Saturday, December 23rd, through the 24th, 25th, and 26th. The 24th was Sunday and the 25th Christmas. Supervisor Lynch advised Ashford that they had information that a storm was heading West and he would not permit Ashford to absent himself. At 7:30 P. M. on the 24th Supervisor Lynch advised Ashford that he was released from the instructions of the previous day.

The claim involves 23½ hours' pay at the rate of time and one-half for the period from 8:00 P. M., December 23rd to 7:30 P. M., December 24th, 1939.

The Organization relies on Rules 3—(L-1), (L-2), (m), and (n) which we quote:

"(L-1) The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established work period by hourly rated employees shall be paid for as follows:"

"(L-2) Overtime hours, either prior to or following and continuous with regular working period, shall be computed on the actual minute basis and paid for at the rate of time and one-half."

"(m) Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40)

minutes at the time and one-half rate; if held longer than two (2) hours and forty (40) minutes they will be paid at the rate of time and one-half computed on the actual minute basis. The time of employees so notified will begin at the time required to report and end when released at home station. The time of employees so called will begin at the time called and end at the time they return to designated point at home station."

"(n) Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management where they may be called. When such employees desire to leave their home station or section, they will notify the person designated by the Management that they will be absent, about when they will return, and when possible, where they may be found. Unless registered absent, regular assignee will be called."

The Carrier cites Rule 7, reading:

"LEAVE OF ABSENCE: (a) Employees will, upon request, be granted a leave of absence not to exceed a period of ninety (90) days when the requirements of the service permit.

(b) Except for physical disability of the employee or his immediate family, leave of absence in excess of ninety (90) days in any twelve (12) months period shall not be granted unless by agreement between the Management and the General Chairman.

(c) An employee who fails to report for duty at the expiration of leave of absence shall be considered out of service, except that when failure to report on time is the result of unavoidable delay, the leave will be extended to include such delay."

Rule 3 (n) required Ashford to notify the person designated by the Carrier, in this case Supervisor Lynch, when he desired to leave his home station, when he would return, and where he might be found. It does not require the employee to secure permission from his superior officer before leaving his residence to go to some point where he may be out of calling distance. A previous agreement between the Employees and this Carrier did require an employee to secure permission, but this was changed in the current agreement and all it now requires of an employee is that he notify the Carrier that he will be absent from his station.

The Carrier substantially states the situation in its submission when it says that "due to the peculiar line of work these men were engaged in, it was essential that their foreman or supervisor know of their whereabouts so that they may be called when emergencies arose. It is for this express purpose that the rule is in the agreement, and all we ask of the employees that are assigned to regular maintenance territories that they notify the person designated by the Management where they may be called in event an emergency situation arises."

The Carrier contends, however, that it is not Rule 3 (n) that applies in this case but rather Rule 7, quoted above, and known as the "Leave of Absence" rule. With this contention the Board cannot agree. Rule 7 is intended to provide opportunity for an employee to secure permission from the Carrier for a leave of absence but not to exceed 90 days unless by agreement between the Management and the General Chairman. During the period granted he is totally removed from the service of the Carrier.

It is admitted by the Carrier that Ashford was definitely told by his superior officer on the evening of December 23rd that he would be subject to call and that he could not leave his home station. He was not released from being subject to call until 7:30 P.M., Sunday, December 24th, 1939. Thus we find that Ashford was required to be ready for service during this

period of time. It was stand-by service. It was of value to the Carrier or otherwise it would not have required Ashford to have been subject to call during this period of time. As someone has said, "They also serve who only stand and wait."

Ashford performed a specific service for the Carrier and is entitled to be compensated for this service under the provisions of the current agreement for the 23½ hours' stand-by service performed from 8:00 P. M., Saturday, December 23rd to 7:30 P. M., Sunday, December 24th, 1939. This payment is governed by the provisions of Rule 3 (L-1) stating all service performed outside of the regular work period shall be paid on the basis of time and one-half.

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 employe involved in this dispute are respectively carrier and employe 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 the carrier violated Rule 3 (n) of the agreement and that claimant is entitled to be compensated for such service in accordance with the provisions of the current agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1942.