

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of J. T. Dettle, Signal Maintainer, Winona, Minnesota, for six (6) hours and thirty (30) minutes compensation at punitive rate, a total of \$9.26, for services rendered from 5:00 P. M. until 11:30 P. M., Thursday, July 8, 1943.

JOINT STATEMENT OF FACTS: Mr. J. T. Dettle is regularly assigned to a position of Signal Maintainer at Winona, Minnesota. The assigned hours for this position are from 8:00 A. M. until noon and from 1:00 P. M. until 5:00 P. M. daily except Sundays and holidays. Mr. Dettle completed work on his regular assignment at 5:00 P. M. July 8, 1943 and thereafter, until the beginning of his regular assignment the following day, was subject to call in accordance with the provisions of Rule 15 of the schedule covering Signal Department employees.

Sometime prior to 5:00 P. M. on that date Mr. Dettle asked permission of the chief dispatcher to leave his home station and be away from that station from 5:00 P. M. July 8 until the arrival of No. 56 at Winona 11:30 P. M. the same day. The chief dispatcher refused his request. The claim is based on the refusal of the dispatcher to allow him to be away from his home station from 5:00 P. M. to 11:30 P. M. July 8, 1943.

There is an agreement between the parties effective November 1, 1938.

Oral hearing is desired.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that there was a violation of the present agreement when the carrier declined to allow claim for compensation under the provisions of Rule 13, which is quoted here for the convenience of this Division:

"The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows: Overtime hours, either prior to or following and continuous with the regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half.

"Employees shall not be required to work more than two (2) hours after regular hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to twenty (20) minutes."

Maintainer) desire to leave their home station, they will secure authority from the train dispatcher, who will grant permission if the requirements of the service will permit." If the requirements of the service will not permit, as in this instance, there is no provision in that rule that any additional payment is to be made to the Signal Maintainer except "on Sundays and holidays."

Other Signal Maintainers were away from their home stations on that evening July 8, 1943, considering which, and particularly the fact that to have granted Mr. Dettle's request would have meant that in the event of an emergency requiring the services of a Signal Maintainer on the high speed and important La Crosse and River Division, Second District, no Signal Maintainer would have been available between La Crosse and Red Wing a distance of 89.1 miles, between which points are located the headquarters of four Signal Maintainers (inclusive of Mr. Dettle's headquarters at Winona) with three of the four Signal Maintainers having been granted permission to be away from their home station.

Considering Rule 15 which provides that the train dispatcher will grant permission if the requirements of the service will permit and the fact that all other Signal Maintainers located between La Crosse and Red Wing had been granted permission to be away from their home station on the evening of July 8, 1943 surely it was proper for the representative of the carrier in this instance to properly decline the request of Mr. Dettle, when giving consideration to the service requirements, and there was nothing unfair or contrary to schedule rules in connection with the request being declined. Also when considering the circumstances upon which the declination of Mr. Dettle's request was based, the provisions of Rule 15 and the fact that Mr. Dettle performed no service whatever from 5:00 P. M. to 11:30 P. M., July 8, 1943, it is the carrier's position the claim is not supported by schedule rule and it is respectfully requested that same be declined by your Honorable Board.

OPINION OF BOARD: The facts of this case are tersely stated in the foregoing joint submission of the parties. The issue for determination is whether the claimant is entitled to be compensated for a period of time, between his regularly assigned working hours, during which he was denied permission to leave his home station.

Rules 13 and 68 of the Agreement establish a definite hourly rate of compensation for an eight-hour day and provide for rate and one-half for overtime, computed on a minute basis, for the position occupied by the claimant. This, standing alone, is sufficient to bind the carrier with an express contractual obligation to compensate the claimant according to the terms of the Agreement for all services performed by him pursuant thereto. The question arises, then, whether an employe is in service while he remains at his station by reason of the carrier's refusal to grant him permission to leave it.

Rule 15 provides, in effect, that employes of the class to which claimant belongs, who desire to leave their home station or section during unassigned hours, shall first obtain authority so to do from the train dispatcher, and that said dispatcher shall grant such permission if the requirements of the service will permit. It follows that when such permission is denied it is a violation of duty for an employe to leave his station. This creates a situation comparable to that of being held for service, as distinguished from merely being subject to call, and the employe is ordinarily entitled to pay under such circumstances. Awards 826, 1675 and 2032

The carrier says that the general rule just stated is not applicable here, however, because of the following specific provision found in Rule 15:

"When permission is not granted to be absent on Sundays and holidays, a minimum of four (4) hours at pro rata rate will be allowed and in addition payment for any hours worked at the rate applicable."

It is urged that the above rule limits the carrier's liability to pay for time during which an employe may be forbidden to leave his home station to Sundays and holidays. We cannot sustain that interpretation of the Agreement. Rule 14 allows an employe a minimum of 2 hours and 40 minutes if called to perform overtime, and if held longer he is to be paid at rate and one-half computed on an actual minute basis; Rule 15 allows an employe denied permission to be absent from his station on a Sunday or a holiday a minimum of four hours at pro rata rate, plus payment for any hours worked at the rate applicable. Reading Rules 13, 14, 15 and 68 together, as we must, we find nothing to indicate that the general rule to the effect that an employe held for service is entitled to pay is not applicable to the situation here presented. To hold otherwise would lead to an unreasonable, if not, indeed, an unconscionable result. We think the over-all purpose of that part of Rule 15 relied upon by the carrier is merely to provide a different basis for computing overtime for services performed on Sundays and holidays than would otherwise obtain under Rule 14. It is inconceivable that the parties intended that an employe might possibly be held subject to the will and direction of the employer 16 hours per day, six days per week without any compensation therefor.

One of the well-recognized tests for determining whether the relationship of master and servant is operative and whether the servant is acting within the scope of his employment, is whether the alleged master has authority to command and direct the activities of the alleged servant and, conversely, whether the latter is under obligation to conform to such control, at the time under inquiry. Measured by this formula, there can be no doubt about the fact that the claimant was engaged in performing service for the carrier during the period when it required him to remain at his station. We find nothing in the Agreement to indicate that it was within the contemplation of the parties that the employes covered thereby should be expected to perform gratuitous service for the carrier at any time or under any circumstances.

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 the carrier violated the Agreement, as alleged in the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1944.