

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of R. B. Smith, Signalman, assigned to work with signal crew and on a "relief assignment," for the difference in eight hours at straight time rate account traveling and waiting during transfer from Sanderson, Texas, to Marathon, Texas, for relief purpose, and two hours at straight time rate, which was allowed.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. B. Smith, a signalman assigned to a signal crew then located at El Paso, Texas, also holding an assignment as reliefman, was working in the latter capacity as signal maintainer at Sanderson, Texas, September 1, 1943, at which time he was directed by the signal supervisor to complete that assignment on September 13 and then transfer to Marathon, Texas to relieve Signal Maintainer Lambert from September 14 to 25, inclusive.

While working as relief maintainer at Sanderson, Mr. Smith was required to assume the same hours and conditions of the maintainer he was relieving. He worked from 9:00 A. M. to 6:00 P. M. daily, except Sundays, with one hour for lunch. At 6:00 P. M. September 13, 1943 Mr. Smith completed a full day's work at Sanderson and in compliance with written instructions from Mr. P. V. Wright, signal supervisor, dated September 1, 1943, reading as follows:

"Signal Maintainer E. S. Lambert at Marathon is asking to be relieved September 14 to 25, inclusive, in order that he may go to hospital at Houston for treatment. Unless otherwise advised you will go to Marathon after you finish on the Sanderson district the 13th and protect the Marathon district the 14th to 25th, incl."

immediately placed himself in readiness to transfer to Marathon. Mr. Smith was not at liberty to use his time as he wished but was required to obey orders.

In carrying out orders Mr. Smith was required to travel from Sanderson to Marathon on train No. 5 scheduled to arrive at Sanderson at 1:20 A. M. and to arrive at Marathon at 3:17 A. M. He, therefore, was actually waiting from 6:00 P. M. to 1:20 A. M. for train No. 5 and traveling on this train from 1:20 A. M. to 3:17 A. M., a total of nine hours, seventeen minutes, but claimed payment for but eight hours at straight time rate for "traveling or waiting." The carrier compensated him for only two hours at straight time rate as "riding time."

There is an agreement between the parties effective February 1, 1941.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the carrier violated provisions of Rule 24 when it declined to allow traveling and waiting time when Mr. Smith made transfer from Sanderson to Marathon.

which relief work is performed. One relief position on each seniority district may be established at the option of the management, but where more than one assignment of this kind is desired, it will be by mutual agreement between the management and the General Chairman. When more than one such position is created, the senior incumbent will be given preference for relief service."

Relief assignment filled by Signalman R. B. Smith was established by bulletin, in the prescribed manner. Copy of the bulletin is attached as Exhibit 2. The rule provides that during period of assignment, Relief Signal Maintainers are to be considered temporarily transferred and will accept the working conditions of the position to which temporarily transferred. The position at Sanderson to which relief Signal Maintainer Smith was temporarily transferred was assigned to work from 8:00 A. M. to 12:00 Noon and from 1:00 P. M. to 5:00 P. M., daily except Sunday. During the week Signal Maintainer Smith was assigned to this position, he worked and was paid for those hours, strictly in accord with provisions of the rules. Had the regular Signal Maintainer worked the assignment he would have been paid 8 hours. Rule 24 provides that employees used for relief work will be compensated in accordance with the provisions of Rule 23, **while actually making transfer to and from position on which relief work is performed.** Relief Signal Maintainer Smith was paid for all time consumed while actually making transfer from Sanderson to Marathon.

Relief Signal Maintainer Smith completed his tour of duty at Sanderson, as stated by General Chairman Ballard, at 5:00 P. M., September 13, 1943, and he did not perform any further service at Sanderson. He had instructions to relieve the Signal Maintainer at Marathon at 8:00 A. M., September 14, and did so. In carrying out these instructions, he left Sanderson on train 5 at about 1:20 A. M., arrived at Marathon at about 3:17 A. M., the actual time of making this transfer amounting to slightly less than two hours. He was allowed two hours for the time consumed in actually making the transfer to and from position on which relief work was performed, strictly in accordance with the provisions of Rule 24. As the rule has been fully complied with, there is no basis for the claim, as made, and it should be denied.

CONCLUSION: The Carrier has shown that the rules of the Agreement have been fully complied with and that relief Signal Maintainer R. B. Smith has been paid strictly in accordance with the provisions of the Agreement.

OPINION OF BOARD: On all dates in question Claimant held the position of Relief Signal Maintainer. He had filled an assignment as such at Sanderson, September 7 to 13, 1943 (excepting Sunday, the 12th, his day of rest), completing it at 5:00 P. M., as claimed by the Carrier, or 6:00 P. M. as claimed by him, on September 13, 1943; on September 1, 1943, he had been notified by the Carrier his next assignment would be at Marathon, a distance of 59 miles from Sanderson, where he was to relieve the regular Signal Maintainer there from September 14 to 25, 1943, and report for duty at 8:00 A. M. on September 14.

Smith left Sanderson for Marathon by passenger train at about 1:20 A. M. on September 14, and arrived at his destination at 3:17 A. M. of the same day, the entire trip taking not more than two hours of actual traveling time. He was paid for two hours and now claims six hours' additional time for waiting at Sanderson from the time he went off duty there until he boarded the train which took him to the point where his new relief assignment was located.

The parties are in accord on the proposition that determination of this controversy depends solely upon the application of not to exceed three rules of the current Agreement. They are Rule 24, which reads:

"Rule 24. **RELIEF ASSIGNMENTS.** Relief assignments may be established by bulletin once each year. Employees assigned to such positions may be used for relief work to fill vacancies when employment of other men is not practicable or on new positions pending as-

signment by bulletin. During period of assignment, they will be considered temporarily transferred and will accept the working conditions of the position to which temporarily transferred. Employees so used for relief work will be compensated in accordance with provisions of Rule 23 while actually making transfer to and from position on which relief work is performed. One relief position on each seniority district may be established at the option of the management, but where more than one assignment of this kind is desired, it will be by mutual agreement between the management and the General Chairman. When more than one such position is created, the senior incumbent will be given preference for relief service."

Rule 23, providing:

"Rule 23. ROAD SERVICE—HELD OUT OVERNIGHT. Hourly rated employees sent from home station to perform work and who do not return to home station on the same day will be allowed time for traveling or waiting in accordance with Rule 22 of this article. All hours worked will be paid for—straight time for straight-time hours, and overtime rate for overtime hours. Actual expenses will be allowed at the point to which sent if meals and lodging are not provided by the carrier."

Rule 22, reading:

"Rule 22. ROAD SERVICE—NOT HELD OUT OVERNIGHT. Hourly rated employees, performing service requiring them to leave and return to home station daily, will be paid continuous time, exclusive of meal period, from time reporting for duty until released at home station. Straight time for all straight time work. Overtime for all overtime work. Straight time for all time traveling or waiting. Riding on or operating motor cars is considered work as referred to in these rules."

In substance the basis of Petitioner's claim is that Smith was waiting from the time he went off duty until he caught the train as it left for Marathon and entitled to compensation therefor. On sober reflection, because of the nature of Petitioner's assignment, we believe this cannot be true unless express authorization for waiting time can be found in the Contract. It must be remembered that Smith held a relief, not a regular assignment, and that in the performance of his duties in that position it was incumbent upon him to fill relief assignments if, as, and when called upon by his employer wherever they might be. He was subject to call for service during all hours outside of the regular hours of the assignment he was working unless he had previously notified the Management, as required by Rule 20, the same as other employees assigned to regular maintenance duties, but in addition it was his obligation, whenever he was assigned to fill the position of a regularly assigned incumbent, to make his services available at the place where such position was located. Hence to that extent his obligation was different from that of the holder of a regular assignment who is called to serve in an emergency and he was not "held for service" within the meaning of that term as defined in our awards from the moment he was notified to appear and take over a position until the time of commencement of his duties there as is the case when the holder of a regular assignment is required to take action of that character.

It is for these reasons we do not believe he can be said to be waiting as though held for service under the existing factual situation here presented, or entitled to compensation for time intervening between going off duty and starting for his new assignment unless, as we have indicated, that result is expressly authorized by terms of the Contract.

In reaching a decision as to whether rules here involved permit or require the result contended for by Petitioner we are obliged to rely solely upon principles applicable to the construction of contracts. Awards cited are of little value as precedents since all of them deal with an entirely dissimilar

situation so far as they pertain to facts and rules involved in arriving at their decision. Certain it is that none of them can be considered as determinative of a situation where a Relief Signal Maintainer is claiming waiting time on the strength of rules containing language similar to those heretofore quoted.

Reference to Rule 24, which after all must be conceded to be the one dealing directly with Petitioner's situation under his assignment, discloses it does specifically provide for compensation to the holders of relief assignments while making transfers, but only to the extent indicated by the words "in accordance with provisions of Rule 23 while actually making transfer to and from position on which relief work is performed."

Now it is Petitioner's contention that this language permits immediate resort in its entirety to the provisions of Rule 23 and its language in turn permits resort to all provisions of Rule 22, each of which deal directly with questions of compensation for employes performing road service in cases requiring them to either leave and return to their home stations daily or those requiring them to leave their home station and remain out overnight. With this we cannot agree. Smith as a Relief Signal Maintainer had no regularly assigned home station and under the Contract his home station was the camp cars of the Signal Gang to which he belonged. Therefore, Rules 23 and 22 certainly had no application to him unless by virtue of the heretofore quoted language found in Rule 24. As we construe that language it definitely limits Petitioner's compensation to the period of time actually spent by him in making the transfer from Sanderson to Marathon. True enough it provided such compensation should be paid in accordance with Rule 23, but that language clearly has reference to that part of such rule containing the formula for ascertaining compensation and in no sense refers to the circumstances under which the holder of a relief assignment would be entitled to it. The conditions and circumstances under which compensation might become payable as we have heretofore indicated are defined and provided for by Rule 24 before resort to the formula in Rule 23 became necessary. By the same token, as the reference to Rule 22, appearing in Rule 23, has application solely to compensation to be paid under conditions not applicable to relief assignments, Rule 22 has no application to this controversy. To hold otherwise would result in reading into an Agreement something that is not there.

Since we find nothing in Rule 24 or other rules relied on by Petitioner which permit allowance for compensation for waiting time as claimed, it follows the claim must be denied.

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

That both parties to this dispute waived hearing thereon;

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 no rule in the current Contract permits or requires allowance of the claim as submitted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1945.