

Award No. 3023

Docket No. SG-2980

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim that H. Gunther, whose regular assignment was that of a signalman in the Construction Forces seniority district, be paid the difference between the straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Tuesday, May 19, 1942, when he was required by the management to fill the position of signal maintainer on the second shift, hours 3:00 P. M. to 11:00 P. M., tower 2, taking the place of A. L. Langdon, the employee regularly assigned to such position; and that he be paid the difference between the straight time rate of 95 cents per hour and the time and one-half rate for services performed on his regular assignment as signalman in the Construction Forces seniority district on Monday, May 25, 1942, the first tour of duty he worked following his release from being required to perform service on the second shift, tower 2, from May 19 to 24, 1942, inclusive. Amount claimed \$7.60.

(b) Claim that H. Gunther be paid the difference between the straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, May 24, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, second shift, tower 2, taking the place of A. L. Langdon, the employee regularly assigned to the position. Amount claimed \$3.80.

(c) Claim that H. Gunther be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, June 7, 1942, when he was required by the management to fill the position of signal maintainer, taking the place of E. Fiburn, the employee regularly assigned to the position. Amount claimed \$3.80.

(d) Claim that H. Gunther be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, June 14, 1942, when he was required by the management to fill the position of signal maintainer, taking the place of Geo. Tippin, the employee regularly assigned to the position. Amount claimed \$3.80.

(e) Claim that H. Gunther be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, August 2, 1942, when he was required by the management to fill the position of signal maintainer, first shift, tower 6, taking the place of S. H. Camp, the employee regularly assigned to the position. Amount claimed \$3.80.

EMPLOYEES' STATEMENT OF FACTS: H. Gunther was regularly assigned as a Signalman in construction forces with a starting time of not earlier than 7:00 A. M. nor later than 8:00 A. M., with Sundays and seven specified

"* * * and, in the absence of a negotiated change as here, the Clerks Agreement will be enforced in accordance with its terms."

Article 13 of the Vacation Agreement does not say that the other Articles in that Agreement will be void unless and until such negotiations are completed: the Employees received the provisions favorable to **them** in the Vacation Agreement without re-negotiation locally. Neither does Article 13 indicate that the conflicting elements between agreements would be decided in favor of the working rules agreements rather than in favor of the Vacation Agreement—on the contrary, Article 13 states that "*** * * such changes or understandings shall not be inconsistent with this agreement.**" (emphasis added) Article 13 of the Vacation Agreement of December 17, 1941, is quoted:

"13. The parties hereto having in mind conditions which exist or may arise on individual carriers in making provisions for vacations with pay agree that the duly authorized representatives of the employees, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

In addition to the foregoing it is the Carrier's request that your Honorable Board review the written opinion of the Carrier members of your Board on this subject, in their "Dissent to Award No. 2340, Docket CL-2430," and that your Board reconsider and set aside the decision in Award 2340 by dismissing this case account lack of jurisdiction.

OPINION OF BOARD: The Claimant was a regularly assigned Signaller in the Construction forces with Sundays and holidays as assigned days off duty. Signallers in the construction forces are not regarded as necessary to the continuous operation of the carrier.

This claim consists of five specified items based upon six alleged violations of the current Agreement. Item (a) is based on an alleged violation of Article VI, Section 4 of the current Agreement which states the rule involving shift changes. Items (b), (c), (d) and (e) are based on alleged violations of Article VI, Section 2, which states the rule applicable when an employee is required to work Sundays or holidays his assigned days off duty.

The evidence indicates that violations of the foregoing rules occurred as alleged. The claims are for the difference between the straight time rate and the time and one-half rate for the days worked that are specified in the claim.

The record shows that the work performed by Claimant for which the time and one-half rate of pay is claimed, grew out of the granting of vacations to the regular occupants of the positions worked. It is the contention of the Carrier that the Vacation Agreement of December 17, 1941, the parties to this dispute being parties to the agreement, controls the disposition of the foregoing claims and requires a finding of a lack of jurisdiction on the part of this Board to determine them, or, if jurisdiction is assumed, a denial of the claim under the terms of the Vacation Agreement.

These issues have been fully determined by our Award No. 3022, Docket SG-2979, adopted this date. For the reasons recited in that Award, we hold that the schedule agreement controls the disposition of these claims and that an affirmative award is required.

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 employees involved in this dispute are respectively carrier and employees 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 an affirmative award is authorized by the controlling agreement.

AWARD

Claims (a), (b), (c), (d) and (e) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1945.

DISSENT TO AWARD No. 3023, DOCKET SG-2980

The Award in this case having declared that the issues have been determined by Award No. 3022, Docket SG-2979, the dissent to Award No. 3022 is applicable to the award in this Docket SG-2980.

(s) C. C. Cook
(s) R. H. Allison
(s) A. H. Jones
(s) R. F. Ray
(s) C. P. Dugan