

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 L. F. Edward, whose regular assignment was that of assistant signalman in the Construction Forces seniority district, be paid the difference between straight time rate of 86 cents per hour and the time and one-half rate for the eight-hour tour of duty on Saturday, April 4, 1942, when he was required by the management to fill the position of assistant signal maintainer, second shift, tower 5, taking the place of R. E. Wilhelm, the employee regularly assigned to such position; and claim that he be paid the difference between straight time rate of 86 cents per hour and the time and one-half rate for the eight-hour tour of duty worked on his regular assignment in Construction Forces on Thursday, April 9, 1942, following his release from being required to perform service on second shift, tower 5, from April 4 to 8, 1942, inclusive. Amount claimed \$6.88.

(b) Claim that L. F. Edward be paid the difference between straight time rate of 86 cents per hour and the time and one-half rate for all services performed on Sunday, April 5, 1942 (his assigned day off duty), when he was required by the management to fill the position of assistant signal maintainer, second shift, tower 5, taking the place of R. E. Wilhelm, the employee regularly assigned to such position. Amount claimed \$3.44.

(c) Claim that L. F. Edward 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, July 12, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, first shift, tower 5, taking the place of F. Summers, the employee regularly assigned to the position. Amount claimed \$7.80.

EMPLOYEE'S STATEMENT OF FACTS: L. F. Edward was regularly assigned as an assistant 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 the seven specified holidays as assigned days off duty. Construction forces are defined in Article I, Section 1 (b), which reads:

"Construction Forces covers that class of employees filling the regular established six (6) day a week assignment and work periods of one shift a day. Sunday and certain holidays as hereinafter named not considered regular assignments for this class of employees. Six Day Assigned Forces will perform work herein specified at any point as may be necessary to meet the requirements of the service."

The instant claims cover working periods when Edward was required by the management to fill regularly assigned positions in the maintenance forces, on a separate seniority district, and when so required at various times between

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 Assistant Signalman in the construction forces with Sundays and holidays as assigned days off duty. The claim consists of three alleged violations of the schedule agreement. Item (a) is based on the alleged violation of Article VI, Section 4, relating to the changing of shifts. Items (b) and (c) are based on alleged violations of Article VI, Section 2, which states the rule applicable when an employe is required to work Sundays or holidays, his assigned days off duty. The claim is for the difference between the straight time rate and the time and one-half rate authorized when violations of the foregoing rules occur. We think the record shows that these cited rules were violated as alleged.

The record shows that the work performed under all three items grew out of the granting of vacations to the regular occupants of the positions. It is the contention of Carrier that the Vacation Agreement of December 17, 1941, the parties to this dispute being parties to that 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 all been determined by Award No. 3022, Docket SG-2979, adopted this date. For the reasons announced in the Opinion contained in that Award, 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) and (c) sustained.

BY ORDER OF THIRD DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) H. A. Johnson
Secretary

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

DISSENT TO AWARD NO. 3026, DOCKET SG-2983

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-2983.

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