

Award No. 3027

Docket No. SG-2984

**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 K. O. McClure, whose regular assignment was that of an 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, June 27, 1942, when he was required by the management to fill position of assistant signal maintainer, second shift, at tower 5, taking the place of R. E. Wilhelm, the employe regularly assigned to the 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 Friday, July 3, 1942, following his release from being required to perform service on second shift, tower 5, from June 27 to July 2, 1942, inclusive. Amount claimed \$6.88.

(b) Claim that K. O. McClure 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, June 28, 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 employe regularly assigned to the position. Amount claimed \$3.44.

(c) Claim that K. O. McClure be paid one day's pay of eight hours at 86 cents per hour for time lost on Friday, July 17, 1942, which was his assigned work day on his regular assignment in Construction Forces. McClure was required by the management to fill the position of assistant signal maintainer, second shift, tower 5, from July 15 to 20, 1942, inclusive, taking the place of R. E. Wilhelm, the employe regularly assigned to such position. Amount claimed \$6.88.

(d) Claim that K. O. McClure 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, July 19, 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 employe regularly assigned to the position. Amount claimed \$3.44.

(e) Claim that K. O. McClure 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 Wednesday, July 15, 1942, when he was required by the management to fill position of assistant signal maintainer, second shift at tower 5, taking the place of R. E. Wilhelm, the employe regularly assigned to the position; and 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 Tuesday, July 21, 1942, following his release from being required to perform service on second shift, tower 5, from July 15 to 20, 1942, inclusive. Amount claimed \$6.88.

(f) Claim that K. O. McClure 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 Monday, August 17, 1942, when he was required by the management to fill position of assistant signal maintainer, second shift, at tower 5, taking the place of R. E. Wilhelm, the employe regularly assigned to the position; and 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 Monday, August 24, 1942, following his release from being required to perform service on second shift, tower 5, from August 17 to 22, 1942, inclusive. Amount claimed \$6.88.

(g) Claim that K. O. McClure be paid one day's pay of eight hours at 86 cents per hour for time lost on Friday, August 21, 1942, which he would have worked on his regular assignment in Construction Forces. McClure was required by the management to fill the position of assistant signal maintainer, second shift, tower 5, from August 17 to 22, 1942, inclusive, taking the place of R. E. Wilhelm, the employe regularly assigned to such position. Amount claimed \$6.88.

**EMPLOYEE'S STATEMENT OF FACTS:** K. O. McClure 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 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 employes 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 employes. 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 McClure was required by the management to fill regularly assigned maintenance force positions, on a separate seniority district, and when so required at various times between June 27 and August 24, 1942, McClure worked outside his regular assigned hours, involving Sundays and changed shifts, and was deprived of working two of his regularly assigned days—namely, Friday, July 17, 1942, and Friday, August 21, 1942. The current Signalmen's agreement contains the following relevant rules:

"Article I, Section 1.

Employes will be classified and referred to under two (2) General Divisions as Regular Maintenance Forces or Seven-day Assignments, and as Construction Forces or Six-day Assignments."

"Article VI, Section 2.

Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid

ployes held out for the same technical and strict application of the working rules to vacation problems as they contended for in the record of this case."

Because the carriers could not hope to gain any modification of the working rules to permit the provisions of the Vacation Agreement to be carried out, the Referee undertook to make such modifications as that in Article 12 (a) of the Vacation Agreement.

In Award 2340, in the "Opinion of Board," it is the Carrier who must pay because the parties did not re-negotiate on the property a rule which already had been awarded the Carrier in Article 12 (a) of the Vacation Agreement of December 17, 1941. In the "Findings" in Award 2340, the following statement appears, quoted in part:

"\* \* \* 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 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 2430 by dismissing this case account lack of jurisdiction.

**OPINION OF BOARD:** Claimant was a regularly assigned Assistant Signalman in construction forces with Sundays and holidays as assigned days off duty.

The claim consists of seven specified items based upon ten alleged violations of the current rules agreement. Items (a), (e) and (f) are based on alleged violations of Article VI, Section 4, dealing with shift changes. Items (b) and (d) 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. Items (c) and (g) are based on alleged violations of Article VI, Section 5, providing that employees will not be required to suspend work during regular work periods to absorb overtime. On the days for which claims are made under Items (c) and (g), Claimant was required to work another position during the hours of Claimant's regular assignment. On Items (a), (b), (d), (e) and (f), the claim is for the difference between the straight time rate and the time and one-half rate. On Items (c) and (g), each claim is for a day's pay at the pro rata rate of his regular position. The record shows that the contract was violated as alleged.

The evidence shows that the work performed under Items (a), (b), (d), (e) and (f) and the work of which Claimant was deprived under Items (c) and (g) 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 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. While Items (c) and (g) present claims involving the violation of a different rule of the schedule agreement than was involved in Award No. 3022, Docket SG-2979, it is governed by the same reasoning as is contained in that Award.

For the reasons announced in Award No. 3022, 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), (e), (f), and (g) 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. 3029, DOCKET SG-2986

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-2984.

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