

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 M. Myers, whose regular assignment was that of a signalman in the Construction Forces seniority district, be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for the eight-hour tour of duty on Saturday, August 15, 1942, when he was required by the management to fill the position of signal maintainer, third shift, tower 2, taking the place of V. O. Dryer, the employe regularly assigned to the position; and claim that he be paid the difference between straight time rate of 95 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 Saturday, August 22, 1942, following his release from being required to perform service on the third shift, tower 2, from August 15 to 20, 1942, inclusive. Amount claimed \$7.60.

(b) Claim that M. Myers 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 16, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, third shift, at tower 2, taking the place of V. O. Dryer, the employe regularly assigned to the position. Amount claimed \$3.80.

(c) Claim that M. Myers 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, August 30, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, tower 9, taking the place of P. C. Crowder, the employe regularly assigned to the position. Amount claimed \$3.80.

EMPLOYEES' STATEMENT OF FACTS: M. Myers 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 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 Myers 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

"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 employes, 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 Signalman in construction forces with Sundays and holidays as assigned days off duty.

The claim consists of three specified items based upon four alleged violations of the current rules agreement. Item (a) is based on two alleged violations of Article VI, Section 4, dealing with shirt changes. 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, Sunday being his assigned one day off in seven. The claims are for the difference between the straight time rate and the time and one-half rate for the days specified in the claims. The record shows that the Agreement was violated as alleged.

The evidence shows that the work performed for which the time and one-half rate 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 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 claims 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 stated 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 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 an affirmative award is authorized by the controlling agreement.

AWARD

Claims (a), (b) and (c) 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-2986.

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