

**Award No. 3052**  
**Docket No. SG-3050**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**FORT WORTH AND DENVER CITY RAILWAY COMPANY**

**THE WICHITA VALLEY RAILWAY COMPANY**

**STATEMENT OF CLAIM:** (a) Claim that Mr. T. S. McCaleb, signal maintainer, Decatur, Texas, be compensated at the rate of time and one-half time for services rendered the Carrier during the following periods:

|        |          |   |          |
|--------|----------|---|----------|
| Sun.   | 7-30-44  | 8:00 a.m. to 12:00 noon and<br>1:00 p.m. to 5:p.m. .... | 8 hours  |
| Sun.   | 8-06-44  | 8:00 a.m. to 12:00 noon and<br>1:00 p.m. to 5:p.m. .... | 8 hours  |
| Sun.   | 10-01-44 | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Sat.   | 10-28-44 | 5:00 p.m. to 12:00 midnight .....                       | 7 hours  |
| Sun.   | 10-29-44 | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Mon.   | 10-30-44 | 12:00 midnight to 8:00 a.m. ....                        | 8 hours  |
| Sat.   | 11-11-44 | 5:00 p.m. to 12:00 midnight .....                       | 7 hours  |
| Sun.   | 11-12-44 | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Mon.   | 11-13-44 | 12:00 midnight to 8:00 a.m. ....                        | 8 hours  |
| Wed.   | 11-29-44 | 5:00 p.m. to 12:00 midnight .....                       | 7 hours  |
| Thurs. | 11-30-44 | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Fri.   | 12-01-44 | 12:00 midnight to 8:00 a.m. ....                        | 8 hours  |
| Sat.   | 12-23-44 | 5:00 p.m. to 12:00 midnight .....                       | 7 hours  |
| Sun.   | 12-24-44 | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Mon.   | 1-01-45  | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Tues.  | 1-02-45  | 12:00 midnight to 8:00 a.m. ....                        | 8 hours  |
| Sat.   | 1-13-45  | 5:00 p.m. to 12:00 midnight .....                       | 7 hours  |
| Sun.   | 1-14-45  | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Mon.   | 1-15-45  | 12:00 midnight to 8:00 a.m. ....                        | 8 hours  |
| Sat.   | 1-27-45  | 5:00 p.m. to 12:00 midnight .....                       | 7 hours  |
| Sun.   | 1-28-45  | 12:00 midnight to 12:00 midnight .....                  | 24 hours |
| Mon.   | 1-29-45  | 12:00 midnight to 8:00 a.m. ....                        | 8 hours  |

account held for duty by his immediate superior on the dates specified above.

(b) Claim that Mr. S. A. Berg, signal maintainer, Fort Worth, Texas, be compensated at the rate of time and one-half time for services rendered the Carrier during the following periods:

|      |          |  |          |
|------|----------|--|----------|
| Sun. | 8-13-44  | 8:00 a.m. to 12:00 noon and<br>1:00 p.m. to 5:00 p.m. .... | 8 hours  |
| Sun. | 9-17-44  | 8:00 a.m. to 12:00 noon and<br>1:00 p.m. to 5:00 p.m. .... | 8 hours  |
| Sat. | 11-04-44 | 8:30 p.m. to 12:00 midnight .....                          | 3½ hours |
| Sun. | 11-05-44 | 12:00 midnight to 12:00 midnight .....                     | 24 hours |
| Mon. | 11-06-44 | 12:00 midnight to 8:00 a.m. ....                           | 8 hours  |

|      |          |   |          |
|------|----------|---|----------|
| Sat. | 11-25-44 | 7:30 p.m. to 12:00 midnight                                     | 4½ hours |
| Sun. | 11-26-44 | 12:00 midnight to 8:00 a.m. and<br>12:00 noon to 12:00 midnight | 20 hours |
| Mon. | 11-27-44 | 12:00 midnight to 8:00 a.m.                                     | 8 hours  |
| Sat. | 12-09-44 | 5:00 p.m. to 12:00 midnight                                     | 7 hours  |
| Sun. | 12-10-44 | 12:00 midnight to 7:30 a.m. and<br>11:00 a.m. to 7:30 p.m.      | 16 hours |
| Mon. | 12-11-44 | 12:30 a.m. to 8:00 a.m.   | 7½ hours |
| Sat. | 1-06-45  | 5:00 p.m. to 12:00 midnight                                     | 7 hours  |
| Sun. | 1-07-45  | 12:00 midnight to 12:00 midnight                                | 24 hours |
| Mon. | 1-08-45  | 12:00 midnight to 8:00 a.m.                                     | 8 hours  |

account held for duty by his immediate superior on the dates specified above.

**EMPLOYEES' STATEMENT OF FACTS:** Messrs. T. S. McCaleb and S. A. Berg, during the period involved in this dispute, were regularly assigned signal maintainers with headquarters at Decatur, Texas and Fort Worth, Texas, respectively, on the Wichita Division of the Fort Worth and Denver City railway. The regular assigned hours for these positions were from 8:00 a.m. to 5:00 p.m., daily except Sundays and holidays, with a lunch period of one hour from 12:00 noon to 1:00 p.m. They were assigned to work six days per week, totaling forty-eight hours per week. The hourly rate of pay was \$1.04 per hour. There were no regularly established or assigned working hours for Sundays or holidays.

On the dates involved in these disputes, as recited in the Statement of Claim, McCaleb and Berg desired to leave their home station or section and requested authority from their immediate superior, Mr. W. O. Frame, Superintendent, Wichita Falls, Texas, to be relieved from duty. In each case they were advised by Frame that their request to be released from duty could not be complied with and that they could not be released.

There is an agreement between the parties bearing an effective date of November 1, 1930 and the relevant rules are quoted herewith for ready reference:

**Rule 1.—Scope:**

"These rules constitute in their entirety an agreement between Fort Worth and Denver City Railway Company and The Wichita Valley Railway Company and Brotherhood Railroad Signalmen of America representing the employees (not including supervisory officers) engaged in or assigned by proper authority to perform work pertaining to the installation, maintenance, repairs and construction of signal apparatus and all other work recognized as signal work."

**Rule 10:**

"Eight consecutive hours exclusive of the meal period, except as otherwise provided in these rules, shall constitute a day's work."

**Rule 21 (a). Sunday and Specified Holiday Work—Full-Day Period.**

"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 employees who are regularly assigned to work on Sundays and holidays, or employees who work in place of those so regularly assigned, will be compensated on the same basis as on week days when the entire number of hours constituting the regular week day assignment are worked, or when released at their own request before the completion of such hours. If released by the carrier before the expiration of the regular week day assignment, time and one-half will be allowed for the actual time worked."

In the claim of Berg for November 4, 1944 (Saturday), the claim period is started at 8:30 PM. The claimant on that date worked three and one-half hours overtime continuous with his regular work period. For that date he was paid eight hours at pro-rata rate and three and one-half hours overtime at the rate of time and one-half. In the claim of Berg for December 10, 1944 (Sunday), he worked three and one-half hours from 7:30 AM to 11:00 AM Sunday morning and worked three hours from 9:30 PM (not 7:30 PM), Sunday night, to 12:30 AM Monday morning, 11th. This totaled six and one-half hours work, for which he was paid at the rate of time and one-half.

Except to the extent hereinabove shown the claimants were not paid for any of the Sundays or holidays designated in the claim period. If they had been called and required to perform work on such days Rule 25 would have authorized payments therefor at the rate of time and one-half under Rule 21, as proven by the experience of Berg on November 4, 1944 (Sunday).

**POSITION OF CARRIER:** Carrier relies on Rule 25, "Available For Service." Let us analyze the rule. It covers two possibilities: An employee who is released by the Carrier on a Sunday or holiday, and the direct opposite thereof, an employee who is not released by the Carrier on a Sunday or holiday. This dispute revolves around the latter condition whereby an employee is not released on a Sunday or holiday. To define the situation of an employee who is not released on a Sunday or holiday Rule 25 breaks into three conditions: (1) He will notify the Carrier's Officer where he may be called, (2) if called he will be paid therefor and (3) he must have authority to leave his home station. Rule 25 by its very nature and by its specific provisions contemplates and cares for situations wherein an employee is not released on a Sunday or holiday. It does not leave to inference or supposition what, if anything, is to be paid under such circumstances, but on the other hand contains a definite specification that if an employee is called he will be paid therefor in the measure provided by Rule 21. The only pay provision in Rule 25 is plainly written, not capable of misunderstanding, and does not authorize any of the numerous methods of payments sought by the claimants on the claim dates that are the subject of this dispute.

It is inconceivable that any one rule or any one set of rules comprehends payments in five different ways in satisfaction of the same working condition, as shown by the Employees' description of the McCaleb and Berg claims. Such a coverage is confusing and unwarranted.

Employees have cited Awards Nos. 826, 1675, 2032 and 2640 of National Railroad Adjustment Board, Third Division. Examination of these awards reveals that they dispose of questions that arose under rules that differ from Rule 25 that is involved in this dispute. Hence, in the opinion of the Carrier, the four awards mentioned cannot be properly cited in this case.

Carrier respectfully requests that the claims be denied.

**OPINION OF BOARD:** Claimants were regularly assigned Signal Maintainers, 8:00 a.m. to 5:00 p.m. daily, except Sundays and holidays, with a one-hour lunch period. On the dates specified in the claim, they desired to leave their home station or section and requested authority to so do. In each case they were advised by the Carrier that their request could not be complied with. Claimants contend that the Carrier in refusing their request, in effect held them for duty and that they are entitled to pay for the period held at the time and one-half rate of the position.

The decision in the case before us must turn on the interpretation to be placed on Section 25 of the current Agreement. The applicable portion of such section provides.

"Employees in maintenance force, insofar as service requirements will permit, will be released from being subject to call on Sundays, and the following holidays \* \* \* and so far as practicable they will be given advance information of release on such days. Employees not so released will notify immediate superior where they may be called. If called they will be paid as provided in Rule 21.

Employees subject to call on Sundays and above specified holidays, and desiring to leave home station or section, will secure authority from immediate superior."

The record is clear that Claimants requested permission to leave their home stations or sections on the dates specified in the claims and that the Carrier declined to grant permission for the reason that service requirements would not permit. Claimants urge that this constitutes a call to service entitling them to time and one-half pay.

As we view it, Claimants regular assignment calls for eight hours of work on six days of each week and the further requirement that they hold themselves subject to call for additional work during the hours not covered by their regular assignment. They have agreed by Rule 25 that they will not leave their home stations or sections unless permission is obtained from their immediate superior. For this service, they agreed to accept the rate of pay prescribed by the Agreement. It is true that the rule provides that the requirement that they remain at their home stations or sections when not working their regular assignments, could be waived by the Carrier by their obtaining permission to leave from their immediate superior. But if the request to leave is made and denied, the effect is that the employee will be required to carry out the Agreement as made. The declination by the carrier imposes no duty upon the employee that he is not already obligated to perform under the current Agreement. We know of no principle by which a carrier can properly be penalized for insisting only upon compliance with the agreement made. Certainly the parties never intended the carrier to be placed in a dilemma by which, if a request to leave the home station or section is made, the carrier must either give the employee extra work for the period of the requested leave at the time and one-half rate or not give him extra work and pay him time and one-half for such period anyhow. Such an incongruous result in effect implies that a refusal to accede to employee's request for a change of status of itself changes his status. Such a result was never intended, nor does the working of the Agreement require any such conclusion.

The Employees rely largely upon Award 2640. While the rule involved in that case provided for the payment of compensation where permission to leave on Sundays and holidays was not granted, the decision is not based thereon. In that Award the Board said:

"It follows that when such permission is denied it is a violation of duty for an employee to leave his station. This creates a situation comparable to that of being held for service, as distinguished from merely being subject to call, and the employee is ordinarily entitled to pay under such circumstances."

I submit that the language of the Award overlooks completely the fact that it would have been just as much a breach of duty for the employee to leave his station before permission to leave was requested as it was after such permission was denied. The duties of the employee are identical before and after permission to leave was refused. Nothing has occurred which can be said to have changed the status of the employee from that of being subject to call to one of being held for service. This is the distinguishing feature between the present case and Awards 1070, 1675, 2072 and 2092, cited by the Employees.

We are obliged to say that the declination by the Carrier to permit Claimants to leave their stations does not of itself under this rule constitute a holding of the Claimants for service. Their status remains the same as it was before the request was made. Consequently no basis exists for an affirmative award.

**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 parties waived oral hearing thereon;

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 the action of the Carrier does not constitute a violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.