

Award No. 3301
Docket No. SG-3307

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: (a) Claim that Signalman Henery F. Wells be paid straight time from 8:00 a.m. to 12:00 noon, and from 12:30 p.m. to 4:30 p.m., his regular assigned hours, part of which he was not allowed to work, and in addition thereto, be paid at the time and one-half rate from 4:30 p.m. to 11:11 p.m., part of which he was only paid straight time, and straight time from 11:11 p.m. to 12:35 a.m., March 7, 8, 9, 10 and 12, 1945, account of relieving the second trick maintainer at Bay Shore Tower, San Francisco.

(b) Claim that Signalman Henery F. Wells be reimbursed for the cost of meals in the amount of \$6.01 incurred while away from his home station on the above dates.

EMPLOYEES' STATEMENT OF FACTS: Henery F. Wells is a signalman in Signal Gang No. 8, headquarters San Jose, California, (J. C. McCurry, Foreman) having acquired the position after it was bulletined for seniority choice on Signal Department Notice, 1944 Series, Signalmen's No. 26, dated October 2, 1944, and was assigned to the position on bulletin No. 28, dated October 17, 1944, as provided for in the Signalmen's agreement. Wells is number 51 on the signalmen's seniority roster with a date of February 3, 1940.

His assigned hours were 8:00 a.m. to 12:00 noon, and 12:30 p.m. to 4:30 p.m., and his headquarters were established by Bulletin No. 26.

Wells was not permitted to work his regular assignment but was required to leave San Jose at 1:30 p.m. and go to San Francisco to relieve the second trick maintainer at Bay Shore Tower. The assigned hours of the second trick position at the Tower were 3:00 p.m. to midnight. Account of train schedules, Signalman Wells was told to return to his home station at San Jose on the last train he was able to ride, which left Bay Shore Tower 11:11 p.m. and arrived San Jose 12:35 p.m. For this service Wells was compensated as follows:

Date	Straight Time	Travel Time	Time and One-half
3-7		2 hrs. 5 min.	9 hrs.
3-8	8 hrs.	2 " 5 "	1 hr.
3-9	8 "	2 " 5 "	1 hr.
3-10	8 "	2 " 5 "	1 "
3-12	8 "	2 " 5 "	1 "

There is a regularly assigned Relief Signal Maintainer on the San Jose District whose regular assigned duties include the relieving of other signal employes who, on account of sickness or other emergencies, are unable to perform their assigned duties. This relief signal maintainer's position was.

until released at home station. Straight time for all straight time work. Overtime for all overtime work. Straight time for all time traveling or waiting." Therefore, in accordance with the terms of Rule 23 the claimant was compensated for the hours worked on position of signal maintainer, each date, March 7, 8, 9, 10 and 12, 1945, at the established hourly rate of said position, \$1.04 per hour, which is the same hourly rate applicable to his assigned position, and in accordance with Rule 24, was allowed payment continuously (exclusive of meal period) from the time he departed San Jose, his home station, traveling to San Francisco, until the time of his arrival and release at San Jose; in other words, he was allowed straight time for all straight time work performed, overtime for all overtime work and straight time for all time traveling or waiting, at the established rate of the position he filled.

The carrier asserts that when the claimant was compensated in accordance with Rules 23 and 24, as set forth above, he was fully and properly compensated pursuant to the controlling rules of the current agreement.

The soundness of the carrier's position as it relates to the application of Rule 23, and likewise Rule 24, to employees sent from their home stations to other locations for the purpose of filling temporary vacancies, is established by Award 706 of this Division which involved a claim that arose on this carrier's property and was submitted to the Division by the petitioner. In Award 706, the Division, speaking through Referee Spencer, stated:

"It is admitted that Claimants Gilmore and Huntman, at the time they were directed by the Carrier to report to Davis and Suisun respectively, were assigned to Signal Gang No. 3 and had their headquarters at Newark, California, in camp cars by virtue of Rule 20 of the agreement which provides that 'outfit cars will be the home station as referred to in these rules for employees assigned to such cars.'

"It is also admitted that the vacancies to which the claimants were respectively assigned were of a temporary character. In each case the regularly assigned employee was absent on leave. It follows that each employee was 'sent from home station to fill a temporary vacancy'—within the meaning of Rule 23. This rule provides that an employee, while filling such a vacancy, 'will be paid for the hours worked at the established rate for the position.'"

It is apparent in the light of the above findings that the petitioner's position in this docket is diametrically opposed to the specific terms of Rules 23 and 24 of the current agreement. For the Division to accept the petitioner's position and sustain the claim would have the effect of deleting said rules from the current agreement. That this Division has the authority to construe and enforce agreements but not to make new rules, or to amend or revise existing rules is an established principle.

CONCLUSION

The carrier submits that it has conclusively established that the claim in this docket is without basis or merit and therefore, respectfully asserts that it is incumbent upon the Division to deny said claim.

OPINION OF BOARD: This claim actually involves two separate claims. Claim (a) includes a contention that straight time and overtime should be paid for the services performed. Claim (b) is for reimbursement for the cost of meals while away from home station. The claims are determined separately.

Claim (a) rests on the following factual situation. Mr. Wells was holding a bulletined assignment, with working hours from 8:00 a.m. to 12:00 noon, and 12:30 p.m. to 4:30 p.m., daily except Sundays and holidays, with home station at San Jose. A temporary vacancy existed at Bay Shore Tower, San Francisco. This position had assigned hours 4:00 p.m. to 12:00 midnight and authorized overtime from 3:00 p.m. to 4:00 p.m. Accordingly, the two positions overlapped from 3:00 p.m. to 4:30 p.m.

Mr. Wells was called from his regular assignment to fill the vacancy and directed to leave and left San Jose each day at 1:30 p.m., arriving Bay Shore at 2:48 p.m. and worked there from 3:00 p.m. to 11:11 p.m., when he returned by train to San Jose, arriving at 12:35 p.m.

Mr. Wells claims straight time from 8:00 a.m. to 4:30 p.m. (his regularly assigned hours at San Jose) and time and one-half from 4:30 p.m. to 11:11 p.m., and straight time until 12:35 when he was traveling in returning to his home station. Mr. Wells was paid straight time for traveling to Bay Shore, overtime from 3:00 p.m. to 4:00 p.m., straight time from 4:00 p.m. to 12:00 midnight, and straight time until he arrived at his home station.

Mr. Wells claims pay under Rule 10, which is in part:

"Overtime hours, continuous with regular working hours, shall be computed on the actual minute basis at the rate of time and one-half . . ."

and Rule 11, which is:

"Employees will not be required to suspend work during regular working hours for the purpose of absorbing overtime."

Rule 13 relates to non-continuous overtime and need not be set out here. The Carrier relies upon Rule 23:

"An employee, when sent from home station to fill a temporary vacancy for one day, will be paid in accordance with Rule 24; if for more than one day, he will be paid in accordance with Rule 25. While filling such vacancy, he will be paid for the hours worked at the established rate for the position, but at not less than his regular rate."

and Rule 24:

"Hourly rated employees performing service requiring them to leave and return to home station and who are not held out over night, will be paid continuous time, exclusive of meal period, from time reporting for duty until released at home station. Straight time for all straight time work. Overtime for all overtime work. Straight time for all time traveling or waiting."

Our task is to harmonize these rules, if possible, in their application to the particular factual situation involved. The question which must be determined is when did straight time end and when did overtime begin for this employee? That question may be answered by determining when his straight time began. A material fact to be remembered here is that Mr. Wells had a regular assignment to work from 8:00 a.m. to 4:30 p.m., excluding a meal time at the straight time rate. That assignment he had secured as a result of seniority. The Carrier did not abolish that position, nor did the employee resign from it. Under the assignment he was entitled to work those hours, and be paid for them. Then if the Carrier can ignore the assignment and use the employee at other hours at its election, assigned jobs resting on seniority rights have a much reduced value to the employee. The rights of the employee under the assignment are not satisfied merely by paying the employee the equivalent pay for working other hours at some other job. The hours and the rate of pay are both involved.

Mr. Wells had the right to work the days involved beginning at 8:00 a.m. Under Rule 10 his overtime hours would have begun at 4:30 p.m. Had the employee began at 8:00 a.m. on his assigned job and thereafter performed this service at Bay Shore he would have been entitled to overtime beginning at 4:30 p.m. But the Carrier did not start him at his regular time, but at 1:30 p.m. The Carrier says it was not practical to start him at his regular job and have him later fill the temporary vacancy at Bay Shore. Had it done so then Mr. Wells would have been entitled to overtime rates after 4:30 p.m. Rule 11 prohibits the Carrier from suspending work during regular hours for the purpose of absorbing overtime. That Mr. Wells was required to suspend work during regular hours is certain. But the Carrier says it was not for

the purpose of absorbing overtime, and that its purpose was to fill the vacancy at Bay Shore. Purpose or intent is not always easily determinable. One test is to ask what is the natural result of the thing done. The result of what was done here, if the Carrier is correct, was to deny Mr. Wells pay at overtime rates for services performed after 4:30 p.m. It absorbed that overtime and the intent of Rule 11 was to prevent that result.

Rule 23 says that the employe will be paid "for the hours worked" while filling a vacancy "but not at less than his regular rate". Mr. Wells, regular rate after 4:30 p.m. was at time and one-half under Rule 10. Likewise under Rule 24 Mr. Wells was entitled to "Overtime for all overtime work." When recognition is given, as it should be, to his regular assigned starting time at 8:00 a.m., then under Rule 24 the service performed after 4:30 was overtime.

Under the facts as disclosed here and for the reasons given it is our view that Claim (a) should be sustained.

Claim (b) requires a construction of Rule 22. That rule is:

"In emergency cases, such as derailments, washouts, snow blockades, fires and slides, employes taken away from their outfits or home stations to work elsewhere will be furnished meals and lodgings, where possible, by the railroad."

Mr. Wells claims the cost of meals away from his home station.

Ordinarily subsistence is a matter for the employe to provide. Effect must be given to all the language of the rule if possible. The Carrier, in Rule 22, does not contract to furnish meals under all circumstances, where the employe is away from his home station. We need not here decide whether the "where possible" is a limitation applicable to "lodgings" or "meals and lodgings". Neither does the Carrier contract to pay for "meals and lodgings, where possible" in all cases falling within the broad classification of "emergency cases". That obligation is limited to emergency cases "such as derailments, washouts, snow blockades, fires and slides". The last quoted language is not all inclusive as to what will be considered emergency cases under the rule but it is descriptive of what was intended to be included in the phrase "in emergency cases". The Carrier's obligation under the rule does not go beyond emergency cases that reasonably are comparable with derailments, washouts, snow blockades, fires and slides. It is limited to emergencies of that class. A temporary vacancy in a position, operating under normal conditions, is not within the class of emergencies contemplated by the rule. Claim (b) should be denied.

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 Employee 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 for the reasons stated in the Opinion Claim (a) is sustained and Claim (b) denied.

AWARD

Claim (a) sustained. Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1946.