

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that Mr. J. W. Murphy, Signal Maintainer, Illinois District, be compensated an additional one (1) hour at the punitive rate of \$1.8375 for each of the following dates: October 3, 4, 5, 7, 8, 9, and 10, 1946, as provided in Rule 15 (b) of the Signalmen's Agreement.

EMPLOYES' STATEMENT OF FACTS: Mr. J. W. Murphy is the regularly assigned Signal Maintainer at DeKalb, Illinois, with established working hours from 7:00 A.M. to 12:00 Noon and 1:00 P.M. to 4:00 P.M.

Mr. J. W. Murphy was notified by Mr. K. Chamberlain, Assistant Signal Engineer, prior to completion of his regular assignment to report for work outside regular working hours sufficiently in advance of his regular starting time to have the A. T. C. current off the track before track forces started to work and who were replacing old rail with new between DeKalb and Malta, Illinois. These instructions from the Assistant Signal Engineer remained in effect until and including October 10, 1946, making a total of seven (7) days.

In compliance with the instructions of the Assistant Signal Engineer, the claimant reported for duty at 6:00 A.M., on October 3, 4, 5, 7, 8, 9, and 10, 1946.

For this service rendered, Murphy presented time slips claiming the minimum allowance of two (2) hours at rate and one-half as provided in Rule 15(b) of the current Signalmen's Agreement.

Under dates of October 7 and 11, 1946, the Assistant Signal Engineer and District Signal Foreman, respectively, returned the time slips to Murphy advising him that the two (2) hours would not be allowed and requested Murphy to correct the time slips to show a claim for one (1) hour instead of two (2) hours. Murphy was paid one (1) hour at the punitive rate for the services he rendered on the days involved in this dispute and the instant claim represents the difference between what he claimed and what he was actually paid.

This claim was handled in the usual manner on the property without securing a satisfactory settlement.

There is an agreement in effect between the parties to this dispute bearing effective date of July 1, 1939, which should be considered as a part of the record in this dispute.

POSITION OF CARRIER: The sole and primary question here involved is whether for service performed by Claimant J. W. Murphy on dates involved in claim account reporting less than two hours prior to regular starting time and continuous with regular assignment he is entitled to compensation as provided in section (c), rule 15, current signalmen's schedule, under provisions of which section he has been compensated or is he entitled to compensation as provided in section (b), rule 15, current signalmen's schedule, as he is claiming.

Rule 15, Signalmen's Agreement, provides as follows:

"(a) Employees released from duty and called to perform work outside of an not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes at rate and one-half. If held longer than two hours and forty minutes they will be paid at rate and one-half, computed on the actual minute basis. Time of employees called will begin at time called and will end when released at designated headquarters, unless release is accepted at another point, except that time in excess of one hour from time called to time reporting at designated headquarters or other agreed to point will not be included.

"(b) Employees notified prior to completion of their assignment to report for work outside of regular working hours will be paid a minimum allowance of two hours at rate and one-half. If held longer than two hours they will be paid at rate and one-half, computed on the actual minute basis. Time of employees notified to report for work outside regular hours of assignment will begin one hour prior to time required to report for work and will end when released at designated headquarters, unless release is accepted at another point.

"(c) An employee called or notified to report less than two hours prior to regular starting time will be paid at rate and one-half from time required to report for duty until regular starting time, with a minimum of one hour, and thereafter at regular rate for regular hours worked."

(Rule 15(a) is not here involved.)

It is the position of the carrier that rule 15(c), Signalmen's Agreement, specifically provides for the basis of compensation to be allowed an employee called or notified to report, as in the instant claim, less than two hours prior to regular starting time and that the provisions of rules 15(a) or 15(b) are not applicable in cases where the employee is called or notified to report less than two hours prior to regular starting time and continuous therewith.

On the dates involved, Signal Maintainer J. W. Murphy, on basis of instructions given him, reported for work at DeKalb, his designated headquarters, at 6:00 A. M., one hour prior to his regular starting time of 7:00 A. M. Therefore, it is the position of the carrier that the provisions of rule 15(b) would not be applicable in such circumstances and that Murphy was properly compensated on basis of one hour at rate and one-half for his service between 6:00 A. M. and 7:00 A. M. in accordance with the provisions of rule 15(c) Signalmen's Agreement.

OPINION OF BOARD: Claimant Murphy is the regularly assigned Signal Maintainer at DeKalb, Illinois, with established working hours from 7:00 A. M. to 12:00 Noon and 1:00 P. M. to 4:00 P. M. Prior to the completion of his regular assignment, he was notified by the Carrier to report for work one hour in advance of his regular starting time. For this service the Carrier paid Claimant for one hour at rate and one-half under Rule 15(c) of the Signalmen's Agreement. Claimant contends that he should be paid for two hours at rate and one-half under Rule 15(b) of the Signalmen's Agreement.

The two sections of the Agreement here involved are as follows:

"(b) Employees notified prior to completion of their assignment to report for work outside of regular working hours will be paid a minimum allowance of two hours at rate and one-half. If held longer than two hours they will be paid at rate and one-half computed on the actual minute basis. Time of employees notified to report for work outside regular hours of assignment will begin one hour prior to time required to report for work and will end when released at designated headquarters, unless release is accepted at another point.

"(c) An employe called or notified to report less than two hours prior to regular starting time will be paid at rate and one-half from time required to report for duty until regular starting time, with a minimum of one hour, and thereafter at regular rate for regular hours worked."

It is quite evident that Section (b) is the more general provision of the two. Section (c) is the more specific and consequently controls over Section (b) on situations coming within it. The facts in the present case recite a situation falling squarely within Section (c), consequently it is the controlling rule and the Carrier properly compensated Claimant in accordance therewith.

Claimant contends that the difference in application of the two sections is founded on whether the employe is notified to report for extra work before or after the completion of his regular assignment. We do not think this is a correct interpretation of the two sections when they are properly construed together. We think the last sentence in Section (b) is intended to give the employe an additional hour at rate and one-half because of the necessity of his making an additional trip to the place of employment to perform the work. It is evident from Section (c) that if the employe was notified to report within two hours prior to regular starting time that an additional trip to perform the extra work was not contemplated, and the reason for the additional hour provided by Section (b) did not exist. So construed the sections are consistent and comply with the evident intention of the parties.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 19th day of May, 1948.