

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that C. L. Wallace, Signal Maintainer with assigned headquarters at Ellenwood, Ga., be properly compensated for all time he was held at his headquarters in compliance with instructions issued by his superior officer under date of October 7, 1945, less any compensation actually received for services otherwise rendered.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing effective date of April 1, 1942 as to rules which govern the hours of service, seniority rights, and other working conditions of the claimant, Signal Maintainer C. L. Wallace, and all other Signal Department employees of this Carrier. We understand this agreement is on file with this Board and request is made that it be considered by reference as a part of the record in this dispute.

The claimant is an hourly rated employee working a regular assignment of eight (8) hours per day, six (6) days per week, except the weeks in which holidays occur; in which event his assignment is reduced by the amount of holidays occurring in such a week. He was not paid any extra compensation except when notified or called to perform work outside of regular tour of duty.

Claimant was the regularly assigned Signal Maintainer at Ellenwood, Ga., when this dispute originated and was assigned to the position on July 28, 1945. He secured this position by virtue of his seniority. He had been in the service of this Carrier since 1917 and began work in the Signal Department in 1924.

Prior to October 7, 1945, and at the time this dispute originated, claimant's home residence was in Atlanta, Ga., approximately eleven (11) miles from his headquarters at Ellenwood. He had a telephone in his home residence and the dispatcher, signal supervisor, and operators at Ellenwood were all properly advised by the claimant where he could be called.

When called for service from his home in Atlanta, he had his own automobile to use in traveling to his headquarters when responding to calls.

Under the terms of the current working agreement the claimant is not paid any compensation for keeping himself available for calls outside of his regular working hours, except when he requests permission to be off call on Sundays and holidays and is denied such request, he is entitled to four (4) hours at straight time rate for being held for duty when denied permission to be off on Sundays or holidays, Rule 26 governing.

OPINION OF BOARD: On July 28, 1945, Signal Maintainer Wallace bid in and was assigned a signal maintainer's position with headquarters at Ellenwood, Georgia. Wallace resided in Atlanta, Georgia, at the time the assignment was made. While his home was from 11 to 13 miles from his headquarters, he could be reached by telephone at that point. Signal maintainers who are assigned a regular maintenance section are subject to call in accordance with Rule 26, current Agreement. The applicable portions of Rule 26 are:

"Employees assigned to regular maintenance duties recognizing the possibility of emergencies in railway operation, shall notify the dispatcher on their division where they may be called and will respond promptly when called.

Employees desiring to be off call on Sundays or holidays will notify the supervisor; if for any reason communication with supervisor be impracticable, will notify dispatcher and request that he notify supervisor. * * * Management shall be privileged, despite such notice, to deny employee such privilege, in which event such employee shall be considered as held for duty and will be paid four (4) hours at the pro rata rate for being so held. * * *

Upon being assigned the signal maintainers position at Ellenwood, Wallace advised his supervising officer that he was unable to find living quarters in Ellenwood and asked permission to continue living at Atlanta and travel to and from Ellenwood by automobile. Wallace was advised that it is necessary for the signal maintainer to live in Ellenwood or in the immediate vicinity thereof, in order to protect his assignment during emergencies. Wallace appears to have met the Carrier's requirement by securing a boarding place in Ellenwood. The record shows that he went home nights on occasion during this period. On October 7, 1945, the Carrier found a house which Wallace could rent and discovered that he had already refused to rent it. Thereafter, Wallace's supervisor advised him as follows:

"Since you are well aware of the fact that the Maintainer should be at the headquarters at all times I shall expect you to stay there."

Wallace claimed that this letter had the effect of holding him for service 24 hours per day except when he requested and was permitted to be off duty. He filed claims to this effect. On October 31, 1945, Wallace's Signal Supervisor wrote him that the effect of the letter of October 7, 1945, was:

"However, in order to clarify the situation in question, my instructions to you in this connection are to protect the job in accordance with Rule 26 of other applicable sections of the Signalman's Agreement."

An examination of the evidence leading up to the letter of October 7, 1945, indicates clearly that it had reference to the matter of Wallace living at or in proximity to his assigned headquarters. Neither Wallace nor the Organization is justified in construing this letter as holding Wallace for service 24 hours per day except when absent by permission. Wallace well knew that no condition or emergency existed which warranted any such interpretation of the letter. His attempt to seize upon the literal wording of the letter as a basis for a claim for service not required, is not justified under the facts and circumstances shown.

It is argued, however, that Wallace is not required by the Agreement to live at or near his headquarters and, therefore, a requirement that he do so, is a holding for service for which he should be compensated. It is true that the Agreement does not specifically require a signal maintainer to live at or near his headquarters. We think that the assignment of a headquarters inferentially requires it. But whether it does or not, the contract being silent on the subject, it is the province of management to require it. It had been the practice of the Carrier on this railroad to require it and the record shows that Wallace well knew it. We do not think the requirement was unreasonable when the nature of the work is considered.

Maintainers are paid for emergency stand-by service. The Agreement provides that they shall work a regular assignment of 8 hours per day, 6 days per week except when holidays occur. In addition, they agree to provide emergency stand-by service at all other times during the week. For all this they are paid the rate provided by the Agreement. Extra work is paid for when they are notified or called to perform work outside their regular assignment or held for duty as provided by Rule 26. Emergency stand-by service is part of the regular assignment and is compensated for by the payment of the rate prescribed for the regular assignment.

Wallace contends that he can meet the requirements of Rule 26 while maintaining a residence in Atlanta. The Carrier contends otherwise. The operation of the railroad being the function of management, and there being no Agreement provision limiting its action with respect thereto, its decision that signal maintainers must live at or in proximity to assigned headquarters is controlling.

The record shows that Wallace was aware of this requirement and used the fact that living quarters were not available as an excuse for not complying therewith. The Carrier appears to have taken a liberal view of the situation until living quarters were made available to Wallace after which it insisted that he live at or near his headquarters. Whatever may be shown about the length of time required to report for emergency work from his home in Atlanta, the fact remains that he could report more promptly if he resided closer to his headquarters. In the efficient operation of its railroad, the Carrier had the right to require the latter.

It is evident that when living quarters became available and no reason existed why he should not meet residence requirements, Wallace became recalcitrant. He evidently desired to live in Atlanta with his wife who was employed there. But he knew what was required of him when he bid in the position. We cannot write a new rule into the Agreement to meet his personal desires. There is no basis 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 Carrier and the Employee involved in this dispute are respectively carrier and employee 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1948.