Award No. 3993

Docket No. SG-3766

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: (a) That Mr. C. L. Wallace, Signal Maintainer at Ellenwood, Ga., be paid four (4) hours at the pro rata rate for being held subject to call on Sunday, December 23, 1945. Amount claimed $4.20.

(b) That the thirty (30) demerits assessed against the personal record of Mr. C. L. Wallace on January 10, 1946, be removed from his record.

EMPLOYES' STATEMENT OF FACTS: Mr. C. L. Wallace 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 in the Signal Department.

Wallace started to work for the Southern Railway in 1917 and had been working in the Signal Department since 1924.

At the time this dispute originated, Wallace's residence was in Atlanta, Ga., approximately eleven (11) miles from his assigned headquarters. He had a telephone in his residence and the dispatcher, signal supervisor, and operators at Ellenwood were all properly advised of the number of this telephone by the claimant.

On December 18, 1945, Wallace wrote to his superior officer, Mr. R. T. Hinds, Signal Supervisor, and requested to be relieved from work. His request is reproduced herewith:

"Ellenwood, Ga.
December 18, 1945.

Mr. R. T. Hinds:—

Can I be off 4:30 P. M. Saturday, 22nd until 7:00 A. M. 26th? Want to attend Christmas party at the Biltmore Hotel, Saturday night and go out of town to South Carolina, Sunday P.M.

Yours truly,
/s/ C. L. Wallace"

In response to his request to be relieved, Wallace received the following reply:

"Atlanta, Ga.
December 20, 1945

C. L. Wallace:

Yours of the 18th requesting absence from your work from 4:30 P. M. December 22nd to 7:00 A. M. the 26th. Sorry but due

With the evidence as we find it in our examination of the entire record **it cannot be said the action of the respondent in dismissing the complainant from its service was arbitrary, capricious or without cause.**" (Emphasis ours.)

* * * *

Curtis W. Roll, Referee, in Award No. 257, Fourth Division:

"This being a discipline case the carrier is vested with discretionary power and under such circumstances this Board's authority is limited. The Board will not disturb the action taken by management unless the record clearly shows that the action taken was arbitrary or in bad faith. From the evidence appearing in the record we cannot say that management acted in bad faith or arbitrarily."

* * * *

CONCLUSIONS: In conclusion, carrier respectfully submits it has shown that:

(1) The Signalmen's Agreement here in evidence contemplates that signal maintainers reside at or close to their assigned home stations on their assigned territory.

(2) Until recently, this requirement has never been questioned by the employes.

(3) Except in unusual circumstances, signal maintainers reside at their assigned headquarters on their assigned territory.

(4) Claimant Wallace did not live at his assigned home station or on his assigned territory—he was not even in his territory. However, he admitted in his letter of August 5, 1945 to Signal and Electrical Superintendent Hudson (Carrier's Exhibit A-1) that "* * * this is an important job, and it is necessary for the maintainer to live here" (Ellenwood).

(5) Claimant Wallace requested permission to be off from December 22 to December 26 and his request was not granted; yet he elected to be off without permission.

(6) Mr. Wallace's request to be off from Saturday, December 22, to Wednesday, December 26, was declined for good and sufficient reasons—primarily, the possibility of bad weather, his services were needed on a work day during the period he desired to be off, and there was an inexperienced assistant signal maintainer assigned to the territory.

(7) Payment claimed under Rule 26 is not valid because:

(a) Mr. Wallace did not remain at his home station.

(b) He was not on his assigned territory.

(c) It is doubtful he could have been contacted by telephone, even had he been needed.

(d) He could not have responded promptly, had he been needed, *primarily because of the distance involved.*

(8) Mr. Wallace was disciplined for good and sufficient cause, and the carrier did not act arbitrarily, capriciously, or in bad faith in doing so.

For all the reasons given, the claim should be denied, and the carrier respectfully requests that the Board so decide.

Exhibits Not Reproduced.

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. At the time of the assignment, Wallace resided in Atlanta, Georgia, at an estimated distance of 11 to 13 miles from Ellenwood. He could be reached by telephone at this point and his telephone number was in the possession of the proper officers of the Carrier.

On December 18, 1945, Wallace requested that he be permitted to be off duty from 4:30 p.m., Saturday, December 22, until 7:00 a.m., Wednesday, December 26. Carrier refused permission. On December 22, Wallace left a note to the effect that if he was needed from 4:30 p.m., on December 22 to 7 a.m., December 24, he was to be called at his home in Atlanta. Wallace filed a time claim for four hours holding time on Sunday, December 23, 1945. Carrier denied this claim for the reason that Wallace was not at his headquarters on December 23, 1945, the day for which claim was filed, and was not therefore entitled to holding time. Wallace was at his home in Atlanta on the day in question. On January 2, 1946, he was notified to report for investigation on January 4, 1946. So far as material here, he was charged (a) with leaving the vicinity of his headquarters and thereby failing to protect his job in accordance with Rule 26 and (b) for submitting a claim for holding time when he was away from the vicinity of his headquarters and therefore in no position to protect his assigned territory. After investigation, Wallace was given 15 demerits on each of these two charges. We are asked to allow the four hours holding time claimed for December 23, 1945, and to remove the 30 demerits assessed against his personal record.

This case arises out of the same factual situation as that contained in Award 3992 released herewith. The same rules are involved and we incorporate by reference the more detailed facts as stated therein.

We are obliged to say that Wallace is not entitled to maintain his claim for four hours holding time on December 23, 1945. His request for permission to be off duty included more than a request to be off call on a Sunday or holiday, it included a regular assigned work day. Rule 26 affords no relief to an employe under such circumstances.

With reference to the discipline imposed after the investigation, we find as follows: The claimant was away from the vicinity of his headquarters contrary to the express directions of the employer. He must comply with the orders of the Carrier to escape discipline. If in obeying such orders he is required to perform service contrary to the Signalmen's Agreement, the Railway Labor Act affords a remedy. He may not, however, disregard Carrier's orders because he disagrees with the interpretation placed upon the Agreement. It is the Carrier and not the employe that is required to interpret the Agreement at its peril. We find no reason to interfere with the action of the Carrier on this charge.

As to the charge that Wallace submitted a claim for holding time when he was in fact away from the vicinity of his headquarters, we find that no basis for the assessment of discipline existed. If the record had shown that Wallace had submitted a claim for holding time for the purpose of defrauding the Carrier, a basis for discipline would exist. But such is not the case. Claimant was contending that in remaining at his home in Atlanta, he was held for duty in accordance with Rule 26. While he was in error in so contending, we cannot say that he subjected himself to discipline in making claim. He made no false statement in connection therewith, and there being no extrinsic evidence of fraudulent intent, the Carrier's action in assessing 15 demerits for this alleged offense cannot be sustained.

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 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 the Agreement was violated to the extent shown by the Opinion.

AWARD

Claim (a) denied. Claim (b): discipline imposed sustained to the extent of 15 demerits against personal record of Signal Maintainer Wallace.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. J. Tummon
Acting Secretary

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