

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: That Mr. G. J. Ott be paid at the rate of time and one-half at signal maintainer rate for all time held subject to call after four (4) hours' service on Friday, February 21, 1947 until regular work time Monday February 24, 1947, a total of sixty-eight (68) hours at \$1.8375 per hour, less any amounts previously paid by the carrier.

JOINT STATEMENT OF FACTS: There is an agreement between the parties effective December 16, 1942, which, among other things, provides:

RULE 15.—(a) Employees who are subject to call because of the requirement of the service will notify the person designated by the management where they may be called and will respond promptly when called.

(b) For the purpose of minimizing the number of employees held subject to call on Sundays and holidays, a schedule will be prepared by the supervisory officer to show positions which will be subject to call on Sundays and holidays. Men occupying such positions as shown by the schedule will be subject to call on Sundays and holidays designated, and in consideration thereof will be released after four hours' service on the Saturday following the day held subject to call without loss of compensation. It is understood that employees filling positions scheduled as subject to call under the provisions of this rule will, when called, not be confined to work on any particular section or territory. The scheduling of men hereunder will not prohibit the use of other employees on Sundays or holidays, and other employees so used will be paid under Rule 12 or Rule 14 as the case may be. The use of employees not scheduled will not disturb the schedule as set up for men subject to call on Sundays and holidays. Men scheduled will be paid for actual service performed under Rule 12 or Rule 14, as the case may be.

(c) Where there are assistant positions and men occupying them are qualified, the maintainer position and the assistant position may be alternated in being held available for call on Sundays and holidays.

(d) The schedule for employees occupying positions held subject to call on Sundays and holidays will be prepared by the supervisory officer with the purpose in view of distributing the work equally according to requirements of the service and may be changed from time to time.

just right under the rule to more than the rule authorizes and he has been paid as indicated in Exhibit "A" for all duties performed in accordance with the agreement. If it was the intent of Rule 15 that the employe (Assistant Signal Maintainer) carry the conditions of his position with him from one point to another, he could not expect to enjoy the increased rate of pay, work conditions and expenses while away from home.

Under N.R.A.B. Award No. 3290 the employees involved remained on their regular assigned territories, those who were held subject to call as well as those who would have been free from call had not the wire instructions been issued by the Signal Supervisor for each of them to work their regular hours over the weekend. This is an entirely different situation from that of the Ott case wherein Mr. Ott was sent from his regular assignment at Savannah (Assistant Signal Maintainer) to an assignment at Woodbine to fill a position of temporary vacancy as Signal Maintainer. Decision No. 2853 of United States Railroad Labor Board in answering questions "A" and "B-1" support the position that the carrier has referred to above.

The schedule indicating the location of positions subject to call on Sunday makes it obligatory on the part of the Signal Department employe (if qualified) at Woodbine to protect call service on Saturday, February 22 a holiday and Sunday February 23. Mr. Ott, Assistant Signal Maintainer at Savannah, after having talked to Supervisor Telephones and Signals Wilkinson on February 19 understood that the schedule required the position at Woodbine to stand by for call on February 22 and February 23, nevertheless, Mr. Ott accepted the temporary vacancy at Woodbine as Signal Maintainer and protected it on February 20.

For the sake of further observation, let's assume Mr. Ott (or any other qualified assistant signalman) had bid in a maintainer's position and protected it on the weekend it was scheduled subject to call and the same employe the previous weekend had stood by on his regular assignment to protect call; would the carrier be required to pay continuous time at overtime rate from Saturday noon to work time Monday at maintainer's rate on the newly assigned position? Our answer is No and I am sure your Honorable Board will agree with us.

The schedule issued at the close of each year to cover the year following, assigns positions to stand by for call, makes no mention of name or names of employes on these positions. If the employe was intended to carry with him the conditions of his home station to that of his temporary or newly assigned station, the rule would have definitely pointed out this fact. We cannot find in the rules with the signal employes where a signal employe can, under any stretch of the imagination, have any right to receive payment as is claimed in the instant case.

For the above reasons we respectfully ask that the claim be declined.

(Exhibit not reproduced.)

OPINION OF BOARD: The record discloses that Claimant, G. J. Ott, was a regularly assigned Assistant Signal Maintainer at Savannah, Georgia. As required by the provisions of Rule 15 (d) the Carrier prepared and published a schedule for employes occupying positions held subject to call on Sundays and holidays in accordance with Rule 15 (b). This schedule required Claimant to be and he did stand subject to call on the weekend of February 16, 1947 on his regularly assigned position. Consequently, under Rule 15 (b) he was free from call after four hours duty on the following Friday, February 21, 1947, as Saturday, February 22, 1947, was a holiday, being Washington's birthday. However, on Tuesday, February 18, 1947, the Signal Maintainer at Woodbine, Georgia, advised he was sick and unable to perform his duties. Thereafter, on February 19, 1947, Claimant was instructed to go to Woodbine to relieve the Signal Maintainer at that point. Such transfer to fill a temporary vacancy is not a promotion.

Claimant remained on this temporary vacancy from February 20, 1947 to March 10, 1947, inclusive. The Signal Maintainer position at Woodbine

required stand-by service on Saturday, February 22, 1947, and Sunday, February 23, 1947. The record shows that Claimant worked eight hours on Friday, February 21, 1947, and five and one-half hours on Saturday, February 22, 1947. The regularly assigned hours of the Woodbine position were from 8:00 A. M. to 5:00 P. M. daily except Sundays and holidays.

It is the Brotherhood's position that because Claimant was required to and did stand subject to call on his regularly assigned position at Savannah on the week end of February 16, 1947 that, under Rule 15 (b) of the parties' effective Agreement, he was entitled to be free from call after four hours of work on Friday, February 21, 1947 until Monday, February 24, 1947 at 8:00 A. M. when his regularly assigned tour of duty began.

Rule 15 (b) as far as here material, provides as follows:

"For the purpose of minimizing the number of employes held subject to call on Sundays and holidays, a schedule will be prepared by the supervisory officer to show positions which will be subject to call on Sundays and holidays. Men occupying such positions as shown by the schedule will be subject to call on Sundays and holidays designated, and in consideration thereof will be released after four hours' service on the Saturday following the day held subject to call without loss of compensation."

Under Rule 15 (b) when Claimant stood subject to call over the week-end of February 16, 1947, he earned the right to be free of that duty the following week-end and this the Carrier knew or should have known. The right to have this designated time free from call was part of the benefits of the position to which the Claimant was regularly assigned and when earned it belonged to him and Carrier could not deprive him thereof while he remained in its employ. Of course Claimant could voluntarily waive his right thereto by his own act, such as bidding on and accepting another position, accepting promotion, or exercising seniority displacement rights, and thereby accept the conditions of the position to which he elects to transfer, and such has been agreed to by the parties themselves, but that is not the situation here for that is not the effect of an assignment to fill a temporary vacancy.

The claim is in proper form as the basis of pay is under Rule 13 of the parties' Agreement. See Award 3290 of this Division.

In view of the foregoing, we find the claim to be meritorious and that it should be allowed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did violate the Agreement.

AWARD

Claim sustained/

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.