Award No. 5054
Docket No. SG-4922

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: (a) That the Carrier violated provisions of rule 59(a) of the current agreement when it compensated an employe with headquarters at Huron, South Dakota, at hourly rate of pay.

(b) That D. W. McDowell, Signal Helper, be paid the difference in the amount he was paid at the hourly rate and the amount he should have been paid at the monthly rate applicable to position with headquarters at Huron, South Dakota. Claim covers months of September and October 1948.

EMPLOYES' STATEMENT OF FACTS: D. W. McDowell was hired as a Signal Helper on September 1, 1948, to work with Signal Maintainer with headquarters at Huron, South Dakota, and filled the position from September 1, 1948 until October 31, 1948.

The helper position at Huron was not bulletined to employes holding seniority rights on the seniority district, nor did Bulletin Nos. 211, 212, and 213, issued during September and October 1948, show such assignment had been made.

The Signal Maintainer position with headquarters at Huron, South Dakota, carries a monthly rate in accordance with provisions of Rule 59(a), which rule specifically refers to employes assigned with headquarters at Huron and other named points. This condition has prevailed at Huron for more than fifteen years. The monthly salary of this Maintainer is computed on basis of 3156 hours annually, divided by 12 and multiplied by rate.

Signal Helper McDowell was compensated at Signal Helper's hourly rate of $1.13 per hour for 200 hours in the month of September 1948, and for 208 hours in October 1948. Monthly salary computed at rate of $1.13 per hour on basis of 3156 hours annually, divided by 12, is $297.19.

There is an agreement between the parties bearing effective date of July 1, 1939.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the Carrier violated the agreement when it failed to bulletin position of Signal Helper at Huron, South Dakota, to employes holding seniority rights in the district. Current Rule 38(a), quoted here for convenience, clearly indicates that with certain specific exceptions, all new positions and vacancies will be bulletined. Had the parties to this dispute intended to provide otherwise, it would have been an easy matter to have done so. Suffice it to say that through

of signalmen's agreement rules. Further, while D. W. McDowell was employed there was no complaint that he was not being properly compensated. It was not until the Local Chairman wrote the Supervisor Communications and Signals in respect to the case under date of November 27, 1948 (almost a month after the termination of McDowell's employment) that Communication and Signal Department officers had any intimation that the organization contended that McDowell had been improperly compensated and that a claim was being presented.

There is an agreement in effect between the parties to this dispute bearing effective date of July 1, 1939.

POSITION OF CARRIER: It is the position of the carrier that there is no justification for claim presented in favor of D. W. McDowell, nor is such claim supported by any rules contained in agreement between the carrier and the brotherhood, and accordingly should be denied. We base our position on the following facts:

(a) McDowell at the time of employment was advised definitely as to basis of compensation, i.e., that he would be compensated at the prevailing hourly rate and in line with compensatory rules applicable.

(b) McDowell was not assigned to perform road work in a district the extent of which was such that he did not return to headquarters daily, neither was he away from headquarters several days at a time as is contemplated under provisions of rule 59(a), signalmen's schedule.

(c) At no time during McDowell's period of employment did he or anyone else make claim for assignment and compensation in line with provisions of rule 59(a).

(d) No claim was made in behalf of McDowell until approximately thirty days subsequent to termination of his employe relationship with the carrier.

The sole question for this Board to decide is whether on basis of the duties assigned to and required of McDowell he was assigned to "perform road work in a district the extent of which is such that the employe does not return to headquarters daily, and who may be away from headquarters several days at a time, which may include Sundays and holidays." The fact that McDowell was assigned to help a signalman assigned to the above type of position and compensated at a monthly rate in line with the provisions of Rule 59(a) does not automatically classify McDowell's position in the same category as the employes' representative would have this Board believe. As indicated in the carrier's statement of facts, McDowell was not required to accompany a monthly rated traveling mechanic for emergency calls, etc., nor was he required to absent himself from the home point, Huron, South Dakota, as contemplated for position compensated under provisions of rule 59(a), signalmen's schedule.

OPINION OF BOARD: The only rule alleged to have been violated by the Carrier in the statement of claim is Rule 59 (a).

"Rule 59 (a). TRAVELING ASSIGNMENTS, MONTHLY RATED EMPLOYES. An employe regularly assigned to perform road work in a district the extent of which is such that the employe does not return to headquarters daily, and who may be away from headquarters several days at a time, which may include Sundays and holidays, such as positions now assigned with headquarters at Huron, Fremont, Norfolk, and Chadron, unless materially changed by the permanent assignment of additional signalmen in the district, will be paid on a monthly basis and position classified as a traveling assignment. The monthly salary to be determined by multiplying

the hourly rate of the class by 3156 hours (8 hours daily except Sundays and holidays—12 hours on Sundays and holidays) divided by 12, which salary will cover all service performed. No time will be deducted unless the employe lays off of his own accord, and when made will be on basis of days absent or not available, pro rated on basis of calendar days in the month."

The claimant, a signal helper, was paid on an hourly basis. The signal maintainer at Huron, South Dakota, was paid on a monthly basis under Rule 59 (a). The claim is that the helper should also have been compensated on a monthly basis. The Carrier states that the claimant was not assigned to perform road work and he was not away from headquarters several days at a time, including Sundays and holidays. The Carrier states that during the two-month period in question, the records show that the claimant, who was on an hourly basis, did not receive any overtime payments. The Employes do not controvert this evidence. No provisions of the Agreement have been cited which would prevent the Carrier from assigning a signal helper to perform work on an hourly basis. The weight of the evidence is that the signal helper was not required to do any work outside of his regularly assigned hours or days, even though the signal maintainer was required to perform services outside of the signal helpers' assigned hours. The determination of the Board in construing Rule 59 (a) must be made on the basis of the duties actually assigned to the signal helper. The Board cannot find that violations of Rule 38 (a) with reference to the bulletining of positions, and Rule 42 (b), requiring a characteristic notice, are pertinent to the question as to whether the position of signal helper in this case comes under Rule 59 (a). The only relevant evidence is the nature of the work required of and performed by the incumbent. The claim refers only to a violation of Rule 59 (a).

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 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 17th day of October, 1950.