

Award No. 5188

Docket No. SG-5146

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Pennsylvania System Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad on behalf of A. J. Beauchamp, Inspector, Telegraph and Signal, Wilmington, Delaware, and C. W. Collins, Inspector, Telegraph and Signal, Perryville, Maryland, and those that replaced them due to vacation, sickness, etc., for allowable time while they were responsible for work performed by Telegraph and Signal Maintainers, second and third tricks on their sections.

EMPLOYES' STATEMENT OF FACTS: A. J. Beauchamp is regularly assigned as Inspector T. & S. with headquarters at Wilmington, with tour of duty from 8:00 A. M. to 4:30 P. M. with 30-minute lunch period.

C. W. Collins is regularly assigned as Inspector T. & S. with headquarters at Perryville, with tour of duty from 7:30 A. M. to 4:00 P. M. with 30-minute lunch period.

The hours of service for T. & S. Inspectors at time claim was made was eight hours per day, six days per week, one regular day off duty, Sunday if possible, each week without deduction in pay.

The agreement provides that when T. & S. Inspectors are required to perform service covered by Article 1, Section 1, outside their normal hours on assigned working days or on assigned off-duty days, they will be permitted time off from their regular assignment as promptly thereafter as it can be arranged to compensate them for such time worked.

T. & S. Inspectors are responsible for work performed by T. & S. Maintainers on their sections.

An agreement bearing effective date of June 1, 1943 is in effect between the parties to this dispute and request is respectfully made that by reference it be made part of the record in this dispute.

POSITION OF EMPLOYES: The Brotherhood contends that the Carrier violated the provisions of the current working agreement covering Signal Department employees when it refused to grant allowable time for service performed by the claimants outside their normal hours on assigned working days or on assigned off-duty days when they were held responsible for work performed by T. & S. Maintainers, second and third tricks on their sections.

to correct the alleged shortage of any pay check received prior to January 26, 1947.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement And To Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that under the applicable Agreement the Claimants are not entitled to any time, in any form, by reason of the performance by Maintainers, of work in the Claimants' territory at times outside the Claimants' normal assigned hours.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. The claim is before the Board as a request for an interpretation of provisions of the contract between the parties.

The dispute arises from an exchange of correspondence between the Local Chairman of the Petitioner and the Carrier's Supervisor of the Telegraph and Signal Department. On April 11, 1947, the Local Chairman wrote and asked the Supervisor this question: "Are the inspectors on first trick responsible for any work or tests that is (are) performed by men out on trouble at night or regular second and third trick Maintainers?" The Supervisor responded on April 14, 1947, as follows: "Inspectors T. & S. are responsible for work performed by T. & S. Maintainers on their sections."

The contention of the Petitioner is that if inspectors are "responsible" for work performed at times outside of their (inspectors') regular assignment, then such inspectors are entitled to time off as provided in Article 5, Section 1 (a) of the current Agreement (this provision of the Agreement is set forth in the submissions).

This Section of the Agreement authorizes time off when "required to perform service" outside of their regular assignment. This time off is intended to compensate these monthly rated employes for such "time worked" outside of their normal working hours. The Petitioner argues that being held responsible for work performed on their sections outside of the hours of their regular assignment amounts to the same as when the Carrier requires an inspector to hold himself available at headquarters. We do not disagree that, when the Carrier requires an employe, outside of his normal assigned hours, to stand by and be available, the Carrier is controlling his time and such is

akin to time worked. But this is not the same as holding an employe responsible for a duty which the employe may discharge during his regular assigned working hours. The inspector was not required to be present and supervise the work performed by maintainers outside of his assigned hours; nor was he, when not on duty, required to remain at headquarters or even at his home and available every minute. The submissions do not show that inspectors when off duty were not free to use their time as they saw fit.

We cannot, therefore, conclude that being held responsible under such circumstances amounts to service performed or "time worked." For this reason, we must find that the contention of the Petitioner is without merit.

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

The claim is not supported by the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.