Award No. 5204

Docket No. SG-5154

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

TEXAS AND NEW ORLEANS RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the General Committee, Brotherhood of Railroad Signalmen of America, Southern Pacific Lines in Texas and Louisiana—Texas and New Orleans Railroad Company, that monthly salaried Signal Department employes who have rendered compensated service on not less than 160 days during the preceding calendar year are entitled to an annual vacation of six consecutive work days with pay and such employes who rendered compensated service on not less than 160 days during the preceding calendar year who had five or more years of continuous service are entitled to annual vacations of twelve consecutive work days with pay, and that Sundays and holidays are not to be counted as work days.

(b) That Foreman E. G. Stone be allowed one day's pay account afforded but eleven work days vacation with pay during the calendar year 1949.

EMPLOYES' STATEMENT OF FACTS: Mr. E. G. Stone is paid a monthly salary by this Carrier for the calendar days of a month in which he is assigned as a Foreman; however, no deduction may be made for Sundays and/or holidays during period assigned nor for other days of the month unless he lays off of his own accord.

Mr. Stone has qualified for an annual vacation of twelve consecutive work days with pay.

Mr. Stone began his vacation March 7, 1949 and was required to return to duty Saturday, March 19, after but eleven work days vacation with pay.

Rule 63 of the agreement in effect during the period covered in this dispute provided that Foremen were paid on a monthly basis and no deductions would be made for Sunday and/or holidays.

Claims of similar character have been decided by the Third Division, National Railroad Adjustment Board, in Awards Nos. 3996, 4003, 4238, and 4323.

ment between this Carrier and its Signal Employes. Awards 4003, 4238 and 4323 all referred back to Award 3996. Award 3996 covers a case of a signal maintainer who although paid a monthly salary worked a regular assignment and under provisions of an Agreement that restricted the work that could be required of him before or after the usual hours of the working days and on Sundays and Holidays. There is no such situation in the dispute now before this Board. In the case here to be decided, the Agreement provides a **Signal Foreman** is paid **for the calendar days of the month** in which the employe is assigned as foreman and **such monthly rate covers all service rendered as foreman.** Each calendar day is a work day for the Signal Foreman.

He could be required to perform any service needed at any time and on any calendar day in which he was assigned as foreman. **For each day that a Signal Foreman was assigned as such, he was to be paid such proportion of the applicable monthly rate as the days so assigned in the calendar month bear to the number of days in such calendar month.** Clearly each calendar day is a "work day" for a signal foreman under the Agreement between this Company and its Signal Employes, and Foreman Stone was properly paid when he was allowed pay of 12/31sts of his monthly rate for March 7th to 18th, inclusive, as his vacation dates in 1949.

The awards upon which the Organization solely relies to support their claim in this case started out with Award 3996 finding that under entirely different provisions of an agreement a signal maintainer was due an additional vacation day. The Referees in the other awards adopted the theory that a pattern had been set and rendered sustaining awards. Facts as in the case at bar have not been considered and the rules of the Agreement between this Company and its signal employes have not been interpreted to find that Sunday should not have been considered as a work day for a signal foreman on this railroad. We hold that every calendar day was a work day for a signal foreman under the rules of our Agreement and that was our understanding at the time the Agreement was negotiated.

CONCLUSIONS.

The Carrier has shown that this claim will not be subject to submission to the Third Division, NRAB until it has first been submitted to the Committee established under Article 14 of the Vacation Agreement which has original and prior jurisdiction by the very terms of the Agreement between the parties. Further, without waiving its procedural objections, the Carrier has shown that this claim is not supported by the facts in the case and the provisions of the Agreement in effect on this property. The claim was made solely on the basis of awards arising out of different facts and provisions of Agreement not in effect on this property but on other railroads and of which we know nothing. Our Agreement provides that signal foremen are to be paid a proportion of the monthly rate for every calendar day of a month in which the employe is assigned as foreman. That rate covers all service rendered as foreman and in such a situation every calendar day is a work day.

Wherefore, premises considered, the Carrier respectfully requests that the case be dismissed for lack of jurisdiction or that the claim be in all things denied.

(Exhibits not reproduced.)

OPINION OF BOARD: By this appeal the General Committee of the Brotherhood raises the question of whether Sundays and Holidays are to be counted as "work days" in computing the annual vacation periods of monthly salaried Signal Department Foremen who have earned annual vacations of six or twelve consecutive "work days" with pay in accordance with the provisions of the Vacation Agreement.

Claim is made in behalf of Foreman E. G. Stone, who admittedly had earned an annual vacation of twelve consecutive work days with pay, for one day's pay because the vacation of twelve days afforded him, March 7 to 18, inclusive, 1949, included a Sunday, March 13, 1949.

Carrier contends the dispute is not properly here because it has not been presented to and acted upon by the Committee created by Paragraph 14 of the Vacation Agreement.

There is no dispute or controversy here arising out of the interpretation or application of any of the provisions of the Vacation Agreement. Admittedly the Claimant had earned his right to an annual vacation of twelve consecutive work days with pay, as provided for in the Supplemental Vacation Agreement of February 23, 1945. What is here in dispute is the construction of Rule 63 of the parties' Agreement effective February 1, 1941, to determine if Sundays or Holidays are work days of monthly salaried Signal Department Foremen. This latter, in so far as the Committee is concerned, is solely within the jurisdiction of this Division as the Committee's jurisdiction does not extend beyond disputes or controversies arising out of the Vacation Agreement. But even if it was not we think the claim is properly before this Division, which has jurisdiction to handle such disputes, for Claimant endeavored to get the Committee provided for by Paragraph 14 of the Vacation Agreement to handle it but they failed to agree upon its being a claim within their jurisdiction. The procedure set up by the parties for this purpose is set out in their Letter Agreement dated February 2, 1947. Under such circumstances Claimant is not without relief for it is expressly provided in Paragraph 14 of the Vacation Agreement that, if the Committee fails to dispose of the dispute, then the parties are restored to their rights under the Railway Labor Act.

Article 1, Rule 1 of the parties' Agreement effective February 1, 1941, provides in part: "Foremen will be paid on the basis of a monthly rate to compensate for all service performed."

Article 5, Rule 63 provides: "The monthly rate shown for foremen is for the calendar days of a month in which the employe is assigned as foreman and such monthly rate covers all services rendered as foreman. A foreman will be paid only such proportion of the applicable monthly rate as the days so assigned in a calendar month bear to the number of days in such calendar month. No deduction will be made for Sundays and/or holidays during the period assigned as foreman nor for the other days of the month, unless the employe lays off of his own accord."

Work days within the issues herein involved, have been defined by this Division as meaning days on which the regularly assigned work of the position is to be performed. See Awards 3996, 4003 and 4323 of this Division.

Under Rule 63 of the parties' Agreement a foreman is paid in proportion to the number of calendar days he is assigned to the position, except for such number of days as he lays off of his own accord. That is, if he is assigned thereto for only part of a month he is paid such part of the monthly salary of the position as the days he is assigned thereto are in proportion to the number of days in that calendar month. The foregoing Rules also contemplate that if the Foreman is called to perform service on Sundays or Holidays he will not receive additional compensation therefor as Article 1, Rule 1 provides that his monthly rate is to compensate for all services performed. However, Rule 63 provides: "No deduction will be made for Sundays and/or holidays during the period assigned as foreman . . ." Such language clearly indicates that work of the position is not considered as regularly assigned on these days but that on Sundays and/or holidays the foremen are only subject to being called and worked without receiving additional compensation. In view thereof Sundays and Holidays are not "work days" of foremen under Rule 63 of the parties' Agreement under the definition thereof as has been previously adopted by the Division.

We find the claim should be sustained.

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 Employe involved in this dispute are respectively Carrier and Employe 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 has violated 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 31st day of January, 1951.