

Award No. 5496
Docket No. SG-5418

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: That Mr. I. S. Peacock be paid the difference between straight-time rate and time and one-half rate for service performed Saturday, July 3, 1948.

EMPLOYES' STATEMENT OF FACTS: The claimant, I. S. Peacock, held a regularly assigned position as Signal Maintainer, with working hours from 8:00 A. M. to 4:00 P. M.

On July 2, 1948, claimant was instructed by the Carrier to fill a vacancy on the second shift, from 4:00 P. M. to 12:00 Midnight, after having completed his regular assignment on that day. After having filled the vacancy on second shift from 4:00 P. M. to 12:00 Midnight on July 2, 1948 the claimant returned to his regularly assigned position on first-shift from 8:00 A. M. to 4:00 P. M. on July 3, 1948.

There is an agreement in effect between the parties in this dispute which governs rates of pay, hours of service, and other working conditions of the claimant, bearing effective date of April 1, 1948, which is by reference made a part of this dispute.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the Carrier violated the provisions of the agreement when it directed the claimant to perform work on a second shift, from 4:00 P. M. to 12:00 Midnight, and then return to his own regularly assigned hours on the first shift from 8:00 A. M. to 4:00 P. M., without proper compensation. It is contended by the Brotherhood that when the Claimant was assigned to fill the regularly assigned shift position on other than his own shift, he was entitled to time and one-half rate for working the changed shift position and time and one-half for the change back to his own shift. Rule 19 (a) supports our contention and is quoted for ready reference.

"When an employe is changed from one shift to another, he shall be paid at the time and one-half rate for the first shift of each change. This shall not apply to employes' exchanging shifts for their own convenience, nor when exercising seniority."
(Underscoring added.)

In the instant case the claimant was paid at the time and one-half rate for performing service on the second shift from 4:00 P. M. to Midnight on July 2, 1948, but was not paid the time and one-half rate for the change

Signal Maintainer I. S. Peacock was regularly assigned 8:00 A. M. to 4:00 P. M. and obviously could not be assigned to a higher classification and higher rate of pay on a position continuous with and following his regular assignment. In this instance, due to an emergency account illness of Leading Signal Maintainer G. R. Rule Signal Maintainer I. S. Peacock was held on overtime following and continuous with his regular assignment at a higher classification and higher rate of pay as requested by the General Chairman and employes covered by the Agreement.

Signal Maintainer I. S. Peacock did not file a time ticket or make claim for change in assignment on July 3, 1948 with his immediate superior (Supervisor of Signal Department) as provided under Rule 54.

No time ticket or claim for Signal Maintainer I. S. Peacock for July 3, 1948 has been made or handled by the General Chairman of the Organization with the immediate superior (Supervisor of Signal Department) as provided under Rule 63. Mr. Peacock was satisfied with time allowed and pay received for work performed as provided by existing Agreement.

Mr. Peacock was not assigned to work a position of Leading Signal Maintainer 4:00 P. M. to 12:00 midnight July 2, 1948, as Mr. Rule was assigned to that position and those hours. Mr. Peacock filled his regular assignment from 8:00 A. M. to 4:00 P. M. and certainly could not be assigned to two positions, one working from 8:00 A. M. to 4:00 P. M. and another from 4:00 P. M. to 12:00 midnight.

Mr. Peacock was working following and continuous with his assigned hours in an emergency account illness at overtime rate on a higher classification of position and higher rate of pay as provided for under Rule 14 quoted in Statement of Facts. Mr. Peacock was not removed from his regular assignment as Signal Maintainer from 8:00 A. M. to 4:00 P. M., therefore, inasmuch as he was not removed from his assignment, he certainly could not return to it as he worked his regular assignment on July 2, and 3, 1948.

In summary, the Carrier has never received at any time a complaint, protest, or claim from Mr. Peacock, the General Chairman, or any member of the General Committee for July 3, 1948, as provided under Rules 54 and 63 of the existing agreement.

Mr. Peacock worked his regular assignment July 2 and 3, 1948 in accordance with understanding, request and consent of the General Chairman and General Committee and was properly compensated for work performed.

The action of the Carrier, made the subject of this claim, was taken at the request of and with the consent of the General Chairman and General Committee and no complaint, protest or claim has ever been received from the claimant, the General Chairman or any member of the General Committee as provided under Rules 54 and 63. In progressing the claim to the Third Division, Vice-President Gregg is, therefore, attempting to repudiate understandings reached with the General Chairman and General Committee.

There was no violation of existing agreement by the Carrier.

The claim is totally without merit and should be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: It does not appear that the claimant was changed from one shift to another because he regularly worked on the same shift each day July 1st to July 3rd. Hence Rule 19(a) is not applicable.

On July 2nd he performed service outside and continuous with his regular working period when the employe who was to relieve him at the

end of his tour of duty did not report for work. Rule 14 provides in part that "all service performed outside of the regularly established working period shall be overtime." Hence it appears that under the clear and specific provisions of that rule the service performed by the claimant was overtime, which is simply an addition to one's regular tour of duty and not a change in that tour of duty.

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 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 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 3rd day of October, 1951.