

Award No. 5935
Docket No. SG-5848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad that Signalman L. H. Cash, Garnett, Kansas, be paid a minimum call of two hours and forty minutes at his punitive rate of pay for time worked on Sunday, March 11, 1951.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Signalman L. H. Cash, is a monthly-rated employe working a maintenance territory out of Garnett, Kansas, with a daily assignment from 7:30 A. M. to 4:30 P. M., except Sunday, which is the claimant's rest day.

On Saturday, March 10, 1951, the claimant was called at 10:00 P. M. to correct signal trouble on his territory and did not complete the call until 1:05 A. M. Sunday, March 11, 1951.

Monthly-rated employes under the shorter work week agreement on this property (which conforms to the shorter work week agreement signed at Chicago, Ill., on March 19, 1949) are only entitled to eight hours' pay at the straight-time rate for all services performed on Saturdays; therefore, the claimant received no extra compensation for the services he rendered to the Carrier between 10:00 P. M. and 12:00 o'clock midnight, Saturday, March 11, 1951.

For his services between 12:00 o'clock midnight and 1:05 A. M. Sunday, the claimant was paid one hour at his punitive rate of pay. Accordingly, the claim now before the Board is actually for the difference in pay between one hour and two hours and forty minutes at the punitive rates.

The General Committee held and continues to hold that the claimant is entitled to a minimum allowance of two hours and forty minutes at the punitive rate of pay for the services rendered by the claimant between 12:00 o'clock midnight and 1:05 A. M. Sunday, March 11, 1951.

An agreement bearing effective date of September 1, 1939, as revised in some particulars as of September 1, 1949, to conform to the Chicago March 19, 1949 shorter work week agreement, is in effect between the parties to this dispute and is, by reference, made a part of the record covering the Committee's claim.

This claim has been handled on the property in the usual manner without securing a satisfactory settlement.

March 10, 1951 to 1:05 A. M., March 11, 1951 would not involve work on his rest day at all, but would be entirely within the regular working period covered by his monthly rate.

Yet the Employees would have you make two calls out of this period of continuous service of three hours and five minutes duration. They say this is required by a combination of Rule 12 (b-1) and Rule 3, Section 2 (m) notwithstanding that other employees are not paid under Rule 3, Section 2 (m) at all like they are contending this claimant should be paid. The payment to other employees under Rule 3, Section 2 (m) for service 10:00 P. M. to 1:05 A. M. would be three hours and five minutes at time and one-half, even if the period 12:00 midnight to 1:05 A. M. fell upon a rest day. This involves pay for only one hour and five minutes at time and one-half for that period and this is exactly how the claimant has already been paid—he has been paid for work on his assigned rest day just like other employees are paid on that day, which is the requirement of Rule 12 (b-1).

In this dispute, the Carrier has not taken the position that the claimant's rest day did not begin until 8:00 A. M., Sunday, but we hold that such would have to be the conclusion under an application of Rule 3, Section 2 (m). Since the claimant had not been released from duty and notified or called when he performed the service in dispute, but, on the other hand, was in a tour of continuous service, we applied Rule 3, Section 2 (1-2). The Employees were not satisfied with payment of \$2.75 made under that rule for one hour and five minutes work, but made claim for additional pay under a rule which we hold would not require any payment at all—not even the \$2.75 already paid.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimant, Signaller L. H. Cash, is a monthly rated employee working a maintenance territory regularly assigned Monday through Saturday with Sunday his rest day.

On Saturday, March 10, 1951, Claimant was called at 10:00 P. M. because of an emergency. He worked until 1:05 A. M. Sunday, March 11, 1951. Because of being a monthly rated employee the Carrier did not pay him anything in addition for the time from 10:00 P. M. to 12:00 Midnight, but paid time and one-half for the time from 12:00 Midnight to 1:05 A. M. Sunday.

Claimant contends he is entitled to a minimum call of 2 hours and 40 minutes for the 1 hour and 5 minutes of work on Sunday under Rule 3, Section 2 (m) of 1949 Agreement.

The Carrier contends that Claimant was fully paid under Rule 3, Section 2 (1-2) of 1949 Agreement.

Rule 12 (b-1) provides as follows:

“(b-1). An employee assigned to the maintenance of a section and employees regularly assigned to perform road work may be paid on a monthly basis. They will be assigned one regular rest day per week, Sunday if possible. Rules applicable to other employees shall apply to service on such assigned rest day. Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. The straight time hourly rate for such employees shall be determined by dividing the monthly rate by 208-2/3 hours. Future wage adjustments, so long as monthly rates remain in effect, shall be made on the basis of 208-2/3 hours per month. Except as specifically provided in this paragraph (b-1), the rules applicable to monthly rated employees prior to September 1, 1949 shall continue without change.”

The last cited rule is a special rule and specifically takes out the eight hour day as far as Claimant is concerned; in other words, the Claimant can

be worked outside of his regularly assigned hours and still not be entitled to overtime as long as it is not on Sunday, his rest day. That in substance is the meaning of Rule 12 (b-1). This special rule modifies general rules covering the same subject matter. Therefore, the rules that cover hourly employes do not apply to monthly rated employes except as provided in Rule 12 (b-1) in reference to rest days. This being so the awards which say a man's work day is the 24-hour period following his starting time do not apply to this employe since he is paid on a monthly basis. It further follows that under Rule 12 (b-1) the men subject to its provisions work on a calendar day basis and their rest days are on a calendar day basis.

As both parties to this dispute agree the Claimant was entitled to no pay for the time from 10:00 P. M. to Midnight on March 10th. This indicates agreement on the calendar day basis.

The Carrier further agrees that after midnight on Saturday the Claimant was starting on his rest day and paid him for one hour and five minutes at time and one-half under Rule 3, Section 2 (1-2).

The question here presented is whether or not the Claimant was paid under the proper rule or whether he should have been paid a minimum call under Rule 3, Section 2 (m).

Having discussed Rule 12 (b-1) we here decide that the rest day of a man under this rule is based on a calendar day, therefore, at 12:00 midnight Saturday, March 10th, the Claimant was starting on his rest day. The rest day was the calendar day of Sunday.

Rule 12 (b-1) provides that "Rules applicable to other employes shall apply to service on such assigned rest days." Therefore, we must look to the pertinent part of Rule 4 which provides:

REST DAY AND HOLIDAY SERVICE: (Eff. 9-1-49)

"RULE 4. (a) Employes required to perform work on their rest days or on the following legal holidays, viz., New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation or by Proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half.

"(b) Services rendered by employes on their assigned rest days shall be paid for under the provisions of paragraph (m) of Section 2, Rule 3, when there is no employe due to relieve them on such assigned rest days. If used on their rest days in the place of a relief employe the provisions of paragraph (m) of Section 2, Rule 3, will not apply but the regular hours of the assignment will be worked at rate of time and one-half." (Our emphasis).

Rule 4 (b) says an employe shall be paid under Rule 3, Section 2 (m); this last cited rule provides:

"(m) Employes released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes (2'40") at the time and one-half rate; if held longer than two hours and forty minutes (2'40") they will be paid at the rate of time and one-half computed on the actual minute basis. The time of employes so notified will begin at the time required to report and end when released at home station. The time of employes so called will begin at the time called and end at the time they return to designated point at home station."

Rule 4 (b) did not provide for an alternative of payment under Rule 3, Section 2 (m) or Rule 3, Section 2 (1-2). An employe working on his rest day will be paid a minimum call if he works less than 2 hours and 40 minutes, if he works more than that he will be paid on a minute basis. If this Claimant cannot be paid under Rule 3, Section (m) then Rule 4 (b) would have to be disregarded, which we cannot do. Cash worked on his rest day therefore he must be paid under Rule 3, Section 2 (m). He worked less than 2 hours 40 minutes and is therefore entitled to the minimum call.

To be paid under the provisions of the last cited rule it was not necessary that the work not be continuous with his regular working period, as Rule 4 (b) says he should be paid under the provisions of Rule 3, Section 2 (m). Rule 4 (b) refers to the payment provisions of Rule 3, Section 2 (m) and cannot refer to the provision that the work be outside of and not continuous with regular working hours. It is mandatory under Rule 4 (b) that the Carrier pay under Rule 3, Section 2 (m) if a man works on his rest day 1 minute or all day.

Rule 4 (b) is a special rule and provides how a man is to be paid if worked on his rest day. We cannot by interpretation say that this man could be paid under either Rule 3, Section 2 (m) or (1-2) which ever applies. If (1-2) is to be included in Rule 4 (b) it must be negotiated. Rule 4 (b) is specific and definite in its terms. The claimant is entitled to be paid a minimum call for the 1 hour and 5 minutes worked.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Rule was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of September, 1952.