

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Boston and Maine Railroad that Signalman L. A. Testa be paid the difference between the straight-time rate and time and one-half of \$1.75 per hour for all hours worked in excess of forty hours for the work week beginning Monday, July 24—July 30, 1950, inclusive.

EMPLOYEES' STATEMENT OF FACTS: The claimant Signalman L. A. Testa, holds a regularly assigned bulletined position as Signalman in the Terminal Division Signal Crew. The assigned hours of the position are from 7:30 A. M. to 4:00 P. M., including thirty (30) minutes lunch period, five (5) days per week, Monday through Friday, with Saturday and Sunday as his regular rest days. During the seven-day period, July 24—July 30, 1950, inclusive, Mr. Testa worked eight hours each day, totaling fifty-six hours, as listed below:

July 24 Monday	Own Job		
July 25 Tuesday	Own Job		
July 26 Wednesday	MacLeod's Job	—	(temporary vacancy)
July 27 Thursday	MacLeod's Job	"	"
July 28 Friday	MacLeod's Job	"	"
July 29 Saturday	MacLeod's Job	"	"
July 30 Sunday	MacLeod's Job	"	"

for which he was paid straight-time, including his rest days, Saturday, July 29, and Sunday, July 30.

An agreement bearing effective date of July 24, 1942, as amended March 7, 1947 by an Arbitration Award, and again on July 27, 1949 to conform with the Chicago Shorter Work Week Agreement of March 19, 1949, is in effect between the parties to this dispute. Request is made that these agreements, by reference, be made a part of the record in this dispute.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the Carrier improperly applied the provisions of the current working agreement when it used Claimant L. A. Testa to perform service on his rest days, namely, Saturdays and Sundays, for which service the Carrier compensated the claimant at straight-time rate.

It is true, and accepted by both parties, that the vacation schedule, as set up early each year, cannot be rigorously followed due to changes which often occur by virtue of illness, changes of employes from one assignment to another when vacations occur, leaves of absence, etc. Every reasonable effort is made to follow the schedule closely but the use of the designated vacation relief employe (and others if the need arises) to cover other vacation relief is expected and permitted without protest. After all, the fundamental idea is to allow employes their vacations.

4. THE INSTANT CLAIM.

The claim in this docket is that Claimant Testa be paid at time and one-half instead of at straight time "for all time worked in excess of forty hours for the work week beginning Monday, July 24-July 30, 1950, inclusive".

Since Carrier does not have a copy of Petitioner's ex parte submission, no defense can be offered until Carrier becomes cognizant of the rules to be invoked by Petitioner. Carrier does not know what specific days, during this period Petitioner alleges Claimant should have been compensated at time and one-half rate.

Please note that the claim as advanced to the Adjustment Board is "for all time worked in excess of forty hours for the work week beginning Monday, July 24-July 30, 1950, inclusive". (Emphasis added by Carrier.)

Article II, Paragraph (i) of the Signalmen's Agreement defines a work week as —

"The term 'work week' for regularly assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work".

Certainly Testa was a regularly assigned employee. Beginning Monday, July 10, Testa's work week was a week beginning on that day. He worked only five days in that work week. The same is true of the work week beginning Monday, July 17. Monday and Tuesday, July 24 and 25, were part of the work week of the assignment he was then working on. On Wednesday, July 26, he changed to a new assignment with work days Wednesday through Sunday with rest days on Monday and Tuesday. Therefore, on Wednesday, July 26, his work week became a "week beginning on the first day on which the assignment is bulletined to work"—in this case Wednesday. The work performed on Monday and Tuesday, July 24 and 25 was done during one work week commencing on that Monday. The work performed from Wednesday, July 26 through Sunday, July 30, was in another work week, commencing on Wednesday. He did not work more than five days in any work week.

Moreover, since he moved from one assignment to another, he was paid at straight time rate for the regular work days of the assignment. Such payment was strictly in compliance with Article II, Section 25 (k) and consonant with Article 12 (a) of the Vacation Agreement. There is no merit in the claim and it should be denied.

All factual data and argument herein have been brought to Petitioner's attention.

(Exhibits not reproduced)

OPINION OF BOARD: Signalman L. A. Testa claims additional pay for hours worked in excess of forty during the week of July 24 through July 30, 1950.

It is shown by the "1950 Vacation Schedule for Signal Forces", drawn up presumably by agreement of the Carrier and the Organization, that Mr. Testa was booked to work as a substitute for Mr. G. L. Spinney from July 10

to July 21, next for Mr. Carbonneau from July 24 to August 4 and from August 7 to August 18 for Mr. Peterson. It is now admitted that the Claimant, instead of going to the relief of Carbonneau as scheduled, worked his own regular assignment on July 24 and July 25 and then moved into Mr. McLeod's job and worked the next five days. It is not definitely shown why this deviation from the schedule occurred; but examination of Testa's scheduled dates shows that he would have been off July 22 and 23 and again on August 5 and 6 if the schedule had been followed. In other words, the agreed schedule would have provided him proper rest days.

The Carrier's refusal to pay him on the ground that he was moving from one assignment to a new one with different rest days is not valid because he was not actually moving to a new assignment. His assignment during all this period was on a regularly "bulletined position as signalman in the Terminal Division Signal Crew", all as shown by the Joint Statement of Facts.

Under such conditions, if he works seven consecutive days, he is brought within the provisions of Article II, Section 25(k) and his claim is well founded. We believe he had to be designated to deviate from the schedule by which he would have received his rest days. The rule having been violated 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 Employee involved in this dispute are respectively Carrier and Employee 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 rules have been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.