

Award No. 6496

Docket No. SG-6408

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway that Signalman R. C. Capps be compensated in accordance with the then current Signalmen's Agreement and the Vacation Agreement dated Chicago, Ill., December 17, 1941, while relieving Signal Foreman R. H. Allen starting on Monday, June 7, 1948, through Sunday, June 20, 1948.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Signalman R. C. Capps, a regularly assigned hourly-rated employee, was required by the Carrier to fill Signal Foreman R. H. Allen's monthly-rated position which was vacant for fourteen days, June 7 to 20, 1948, inclusive, while Allen was observing his vacation. Allen did not resume duty on his Foreman's position until Monday, June 21, 1948.

For this fourteen days of vacation relief service in Allen's position, the claimant was paid for twelve days, or 12/30 of Allen's monthly rate, hence the claim actually is for two additional days, or 2/30 of Allen's monthly rate.

Signal Foremen in the employ of this Carrier at the time of this incident were paid under the provisions of an agreement covering rules with an effective date of February 16, 1948, and as to rates of pay with an effective date of September 1, 1947.

The February 16, 1948 Southern-Signalmen's Agreement and the National Vacation Agreement dated December 17, 1941, as supplemented February 23, 1945, are by reference made a part of the record in this dispute and will serve as evidence of an agreement between the parties to this dispute.

This dispute has been handled in the usual manner on the property without securing a satisfactory settlement and all material and argument used in this submission was known or presented to the Carrier while being handled on the property.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the Carrier did not properly compensate Claimant R. C. Capps when it used him to fill Signal Foreman R. H. Allen's monthly-rated position for fourteen days, commencing on Monday, June 7, and ending when Allen resumed duty on Monday, June 21, 1948. While the claimant was relieving Allen for four-

ment. Regularly assigned Signal Foreman Allen was, however, the man who was permitted to be off under the rule without deduction from monthly rate and **not** Signalman Capps. Neither Rule 47 nor the Vacation Agreement or supplement thereto provides that two foremen be off one day each week without deduction from monthly rate. But one foreman was entitled to be off and that was Foreman Allen who was regularly assigned.

While June 13 was a day between the two periods of six consecutive work days, Sunday, June 20, was a day occurring after regularly assigned Signal Foreman Allen had completed "an annual vacation of twelve (12) consecutive work days with pay." Furthermore, Rule 47 specifically provides that time off on recognized holidays and one day each week, Sunday if possible, "shall **not** be considered as time actually worked or held for duty." In this situation, there can be no basis whatsoever for a contention that Signalman Capps worked or was held for duty on either Sunday. Moreover, he has already been paid for each day worked or held for duty. Then too, he made week-end visits home each week under Rule 49 which provides in clear and unambiguous language that any time lost on that count is **not** to be paid for.

The Brotherhood here argues that when a Signal Foreman goes on vacation, he is entitled to an annual vacation of fourteen consecutive work days with pay instead of twelve. There can be no basis for such a contention because the Vacation Agreement specifically states that the maximum number of days an employee is entitled to be on vacation with pay is "twelve (12) consecutive work days."

CONCLUSION

In conclusion the Carrier respectfully submits that:

(a) For the reasons herein stated, Signalman R. C. Capps has been compensated in accordance with the Signalmen's effective Agreement, the Vacation Agreement and Supplemental Agreement while relieving regularly assigned Signal Foreman Allen when Mr. Allen was taking "an annual vacation of twelve (12) consecutive work days with pay" beginning on Monday, June 7, and ending on Saturday, June 19, 1948, therefore, the claim which the Brotherhood is here attempting to assert on behalf of Signalman Capps is wholly without merit and, if not dismissed by the Board, should be denied.

(b) Claim should be dismissed for lack of jurisdiction because it has been withdrawn by claimant, but if not dismissed it should be denied.

Carrier, in response to the notice of the Third Division, National Railroad Adjustment Board, without having seen petitioner's submission and undertaking to meet the issues raised in handling of the claim on the property, reserves the right, after being appraised of petitioner's allegations of fact, statement of position and argument, to present such additional evidence and written or oral argument as to it may seem appropriate and necessary for a complete presentation of the case.

All relevant facts and arguments in this case have been made known to the employees' representatives.

OPINION OF THE BOARD: Rule 10 (a) of the vacation agreement provides in part:

"An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; * * *."

By the provisions of Rule 47 it is clear that the monthly rate of signal foremen includes pay for Sundays whether worked or not. That is also indi-

cated by the fact that the Carrier divides the monthly rate by 30 to obtain a daily rate.

Thus we conclude that when the claimant was designated to fill the assignment of a signal foreman on vacation he was entitled to be paid for the Sundays during such period as part of the rate of such assignment.

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

The Agreement 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 February, 1954.