

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that H J. Daley, Foreman T. & S., be compensated at the hourly rate provided in Article 5, Section 1, paragraph (b) of the Agreement for the number of hours as shown on the dates as listed below:

Saturday	—	January 3, 1948—	5	hours	
Sunday	—	" 4, "	14½	"	
Monday	—	" 5, "	6¼	"	
Tuesday	—	" 6, "	6¾	"	
Wednesday	—	" 7, "	7	"	
Thursday	—	" 8, "	6½	"	
Friday	—	" 9, "	5½	"	Total 51½ hours

because Mr. Daley was required to use tools and perform service other than described in Article 1, Section 1 of the Agreement, account of storm breaks in T. & T. and T. & S. pole lines and cables on the Chicago Terminal Division.

(b) Claim that H. J. Daley, Foreman T. & S., be allowed time off from his regular assignment as provided for in Article 5, Section 1, paragraph (a) of the Agreement, for the number of hours as shown on the dates as listed below:

Friday	—	January 2, 1948—	7½	hours	
Saturday	—	" 3, "	11	"	
Sunday	—	" 4, "	9½	"	
Monday	—	" 5, "	9¾	"	
Tuesday	—	" 6, "	9¼	"	
Wednesday	—	" 7, "	9	"	
Thursday	—	" 8, "	9½	"	
Friday	—	" 9, "	10½	"	
Saturday	—	" 10, "	8	"	Total 74 hours

because Mr. Daley was responsible for the men he left his home division with, until their return and also was held subject to call, while on the Chicago Terminal Division.

The Carrier has shown hereinbefore that its proffer of settlement, referred to above, was rejected by the Grand President in his letter of February 27, 1952 (Carrier's Exhibit "C"). The Carrier submits, therefore, that its proffer of settlement of the claims contained in Paragraph (b) of the Employees' Statement of Claim is no longer binding upon the Carrier, and that your Honorable Board is without authority to direct the Carrier to allow the claims on the basis outlined in the General Manager's letter of October 29, 1951, which proffer of settlement, for reasons of their own choice, the Employees have advised is not acceptable to them.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claims of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

All data contained herein have been presented to the employee involved or to his duly authorized representative. (Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a monthly rated signal foreman, by reason of an emergency situation incident to a storm, left his regular assignment at Philadelphia, Pa., in charge of other signalmen and proceeded to Gary, Indiana, where services were performed on the Chicago Terminal Division.

Part (a) of the claim is based on the contention that while so serving, he performed outside of the normal hours of his assignment service other than described in Article 1, Section 1 of the Agreement and therefore is entitled to be paid in accordance with Article 5, Section 1 (b) of Agreement.

Part (b) of claim is based on the contention that claimant was responsible for the men who accompanied him and therefor was in fact performing service covered by Article 1, Section 1, and entitled to an equivalent amount of time off under the provisions of Article 5, Section 1(a).

Also citing Award 6418, however, in behalf of claimant it is contended that no claim comparable to Claim (a) is involved because signalmen in that claim were paid at their proper rate for performing work of the craft. Award

5188 is cited in support of the position taken on Claim (b) as in point, also Award 2640 cited on behalf of Petitioner.

Respondent Carrier takes the position that the same claim based on the same factual situation was disposed of in Award 6418. It is contended that the Agreement only entitles claimant for any service performed while away from his headquarters point at Philadelphia for this emergency service, additional to payment at his monthly rate for service performed within the hours of his assignment, to time off from his regular assignment in accordance with the provisions of Article 5, Section 1(a), equivalent to time actually engaged in service at Gary outside the normal hours of his assignment, including his regular day off duty, on the premise the signal work allegedly performed by him was an integral part of telegraph and signal work properly required of him in addition to his "primary" duties of supervision and inspection, and that no supervision of signalmen was required during off duty hours or while traveling.

This claim and that considered in Award 6418 involves the same factual situation. The claim in Award 6418 involved the signalmen who were in charge of claimant herein. In Award 6418 this Division sustained the claim in Part (a) thereof on the proposition that the men were performing service in handling Company equipment while in transit and were under a condition of alert and subject to be stopped anywhere needed to go to work. Parts (b) and (c) of that claim were denied on the theory that being instructed to remain in the neighborhood of the hotel where they were quartered is not sufficient to justify a demand for payment. (The men were at the time getting 8 or 9 hours a night off duty). Part (c) was denied under Article 2, Section 8(d) relating to compensation requested while using sleeping car accommodations provided en route to their home station.

Article 4, Section 17 of the Agreement deals with employees assigned to temporary service, on home district, or transferred from one seniority district to another for temporary service and Section 15 of Article 2 relates to employees taken from assigned territory to work elsewhere in an emergency. Article 5, Section 1(a) provided in part:

" * * * These monthly rates shall constitute full and complete compensation for all service included in their assignments, the primary duties of which are described in Article 1, Section 1, which they are required to perform. * * *"

and (b) of Article 5, Section 1, provides in part:

"* * * required to perform outside the normal hours of his assignment, or on his regular off duty day, service other than that included in his assignment, the primary duties of which are described in Article 1, Section 1, shall be paid for the actual time so engaged at an hourly rate of pay computed by dividing the monthly rate by 243-1/3 hours and multiplying the result by 1 1/2"

On the proposition of handling of tools, splicing cables, repairing wires and acting as ground man for men on poles, we are of the opinion that this comes within the accepted definition of "primary duties" as used in the scope rule.

There is discussion in the record and also in argument made on behalf of the parties relative to a proposed settlement of this controversy. An offer was made by Carrier and refused by Petitioner, therefor we give no further attention to that incident.

However, there does appear to be a discrepancy in the computation of hours worked as time actually on duty beyond 8 hours on his off duty day and under Article 5, Section 1(a), Claimant is entitled to 51 hours and 30 minutes

in a proper computation of hours actually worked outside of the normal hours on assigned work days or on assigned off duty days, off his regular assignment.

The proposition that Claimant is entitled to be compensated for hours spent in traveling as contended and the instructions relative to staying within the vicinity of the hotel where quartered in Gary, is no well founded in our opinion.

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 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 claim (a) is sustained in accordance with the Opinion; all other claims are denied.

AWARD

Claims disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of March, 1954.