

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier failed to properly compensate the following employees for services rendered on the specified rest days (Carrier's file L-130-38).

L. W. Schildmiller, July 18, 25, August 1, 2, 8, 9, 15, 16, 1953.

H. McGuire, July 18, 1953.

L. L. Mangels, July 18, 25, August 1, 2, 8, 9, 15, 16, 22, 23, 1953.

F. W. Waters, July 18, 25, August 1, 2, 8, 9, 15, 16, 22, 23, 1953.

O. R. Ireland, July 18, 25, August 1, 2, 8, 9, 15, 16, 22, 23, 1953.

J. S. Pearson, July 18, 25, August 1, 2, 8, 9, 15, 16, 22, 23, 1953.

R. Connery, July 18, 25, August 1, 2, 8, 9, 1953.

A. L. Baker, July 25, August 1, 2, 1953.

A. L. Baker, July 25, August 1, 2, 1953.

V. A. Drury, August 1, 22, 23, 1953.

G. Jensen, August 2, 9, 16, 23, 1953.

J. J. Dailey, August 1, 2, 8, 9, 15, 16, 1953.

(b) The claimants be paid the difference between the compensation paid them and what they are properly entitled to for rest day services.

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly assigned to positions in the Silvis Repair Shop with a work week consisting of five working days, Monday through Friday, and two rest days, Saturday and Sunday.

for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under Rule 17, Section 2 (g)-3.

There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime." (Emphasis added.)

As clearly demonstrated by the above rule, all payment is predicated on work performed.

It has not been the practice since the first Agreement between the parties (July, 1921), under any call or overtime rules where signal shop employes were required to work on Sundays or holidays prior to the 40-Hour Week Agreement, or on rest days or holidays subsequent thereto, to pay for noon meal periods not worked when the full number of hours of the regularly assigned work week day were worked.

We believe these many years of practice are proof positive of the intent of the parties when present Rules 17 (c) and 18 were made a part of the Agreement.

Without prejudice to, or in any manner waiving Carrier's position as to the merits of this claim, it is the Carrier's further position that should the claim be sustained, the only penalty that may be assessed is that at pro rata rate of pay (see your Board's Awards 5923 and 6241).

It is hereby affirmed that all of the foregoing is, in substance, known to the employes' representatives.

OPINION OF BOARD: The facts of this case are not in dispute. The claimants are signalmen and signal helpers at Carrier's Signal Repair Shop at Silvis, Illinois. On the dates in question (all rest days for these employes) Claimants were assigned to work eight hours with an additional half hour lunch period. Thus they were scheduled to work from 7:00 A. M., their usual starting time on regularly assigned days of the work week, and were released at 3:30 P. M., also as on days of the regular work week, and were given a lunch period of thirty minutes without pay, the same as on regular days, Monday through Friday. In short, on these rest days, as on regular work days, each employe had eight hours of work broken by a half-hour lunch period. For this each was paid for eight hours at time and one-half. It is the contention of the Brotherhood that, for such rest day assignments, the employes must be paid at time and one-half rate on a minute basis from the time called to work until released.

The following rules are cited:

"RULE 17. SECTION 1—(c) SERVICE ON REST DAYS:

(1) Service rendered by an employe on his assigned rest day or days, shall be paid for under call Rule 18 except as provided in paragraph (2) of this section (c).

"(2) Service rendered by an employe on his assigned rest day or days, relieving an employe regularly assigned to work such day, shall be paid a minimum of eight (8) hours at one and one-half times the basic straight time rate and consistent with Rule 25."

(Admittedly paragraph (2) of Section (c) does not apply in the instant case.)

"RULE 18. CALLS: Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum of two (2) hours and forty (40) minutes at rate of time and one-half, and when held on duty longer than two (2) hours and forty (40) minutes, time will be computed on actual minute basis and paid for at the rate of time and one-half. . . ." (Emphasis added.)

"RULE 9. MEAL PERIOD—GENERAL: When a meal period is allowed, it will be regularly established between the end of the fourth hour and the beginning of the sixth hour after starting work. If the established meal period is not afforded, it shall be paid for at the overtime rate and thirty (30) minutes with pay, in which to eat, shall be afforded at the first opportunity. This does not apply to employees assigned to eight (8) consecutive hours including an allowance of twenty (20) minutes for lunch."

"RULE 10. MEAL PERIOD—FIRST OF ONE OR TWO SHIFTS: Where one shift is worked, or for the first shift where two shifts are worked, the meal period shall be not less than thirty (30) minutes nor more than one hour and consistent with the requirements of the service and the convenience of the employees affected." (Emphasis added.)

In view of all the language which the parties have devoted to the subject of meal periods, it is difficult for us to accept the contention of the Brotherhood that the Agreement does not provide for meal periods on rest days. On the contrary, if Rules 9 and 10 have any meaning, the Carrier is required to provide meal periods at reasonable intervals or lay itself open to the charge of contract violation. We cannot agree with the Organization's contention that "it is the Carrier's prerogative to refuse 'breaks' in rest days service if it so desires. . . ." Rules 9 and 10 are applicable to service on rest days as well as on days of the regular work week.

This being the case, we think it was the intent of the parties to follow regular practice on rest day assignments, as on other days, so far as meal periods are concerned. If it is customary to allow a thirty minute break for lunch "between the end of the fourth hour and the beginning of the sixth hour after starting work", the Carrier is not relieved of its obligation to provide such a break simply because this is a rest day assignment.

We must give effect to all pertinent language in the Agreement and not lift one clause out of context to bring about a result which the parties obviously did not intend.

According to Rule 9 the Carrier is required to pay for the lunch period at the overtime rate, "if the established meal period is not afforded". The implication is clear that if the meal period is afforded no such penalty rate prevails.

Regardless of the language of Rule 18, we must conclude that it was the intent of the parties to provide for meal periods on rest days as on other days of the week; and the only reasonable conclusion is that such breaks were to be in keeping with regular practice and to be paid for at the time and one-half rate only when not afforded. When the employee is required to work from the end of the fourth hour to the beginning of the sixth hour without a break he must be paid for 30 minutes at the punitive rate and allowed a break for lunch "at the first opportunity". We think it was the clear intent of the parties to pay the punitive rate for lunch periods only when such periods were worked and not allowed as breaks for the employees.

Work scheduled on rest days is paid for at the punitive rate, for time worked, with a minimum guarantee of two hours and forty minutes. In this case the Carrier worked the Claimants at regular hours and allowed the regular lunch period. The employees were paid for the full eight hours worked at time and one-half. We must conclude that the Agreement was not violated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1956.