Award No. 7956
Docket No. SG-7476

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Eastern Lines)

STATEMENT OF CLAIM: Claim of the General System Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway:

(a) That the incumbent Leading Signal Maintainer working at Argentine Hump Yard, on the Kansas City Division, be paid eight hours at rate of time and one-half of the Leading Signal Maintainer's rate, for each day another employe was used on his assignment, assigned territory, on Saturdays since June 12, 1951.

(b) That the incumbent Signal Maintainer Working at Argentine Hump Yrd, on the Kansas City Division, be paid eight hours at his own straight time rate for each Monday he was not used on his own position, and the difference between his straight time rate, and time and one-half rate for eight hours on each Saturday since June 12, 1951.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the Atchison, Topeka and Santa Fe Railway Co., et al., and the Brotherhood of Railroad Signalmen of America bearing effective date of February 1, 1946, which was in effect at the inception of this claim.

This agreement was revised effective October 1, 1949, to conform with the National Shorter Work Week agreement signed at Chicago, Ill., March 19, 1949.

It is understood that a copy of the Santa Fe-Signalmen's Agreement of February 1, 1946, and subsequent revisions are on file with this Board which are, by reference, made a part of the record in this case.

The Carrier maintains and operates a car retarder system at Argentine, Kansas, which was placed in service during April 1949, and at that time the signal maintenance force was established and consisted of one Leading Signal Maintainer, three shift Signal Maintainers, and one relief Signal Maintainer. This force was augmented by one relief Signal Maintainer when the shorter work week was effectuated at this point. This maintenance force was maintained and continued until June 12, 1951, when all the positions were

"Suffice to say there must have been some doubt in the minds of Petitioners as to the merits of these claims or the same would have been progressed more rapidly after the requests were denied by Carrier. With such a view we are inclined to be in agreement as the Scope Rule in the effective Agreement, in our opinion, does not give the exclusive right to petitioners to the work in question. Also in keeping with the finding in Award 5256, we find no showing of sufficient strength as to any change in the volume and character of the work involved to merit a sustaining award."

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The penalties claimed by the Brotherhood in the instant dispute are excessive and contrary to certain well established principles adhered to by the Third Division.

Without prejudice to the Carrier's aforementioned position that the instant claim is without schedule support or merit, the Carrier wishes to point out that Item (a) of the Employes' claim contemplates the payment of eight (8) hours at penalty time and one-half rate to claimant leading signal maintainer on Saturdays on which he performed no service, the payment of which would be contrary to the well established and recognized Board principle that the right to work is not the equivalent of work performed under the overtime and call rules—see Third Division Awards 5195, 5261, 5419, 5437, 5548, 5708, 5764, 5929, 5967, 6782 and many others. Furthermore, Item (b) of the Employes' claim, which contemplates payment of eight (8) hours at pro rata rate to claimant maintainer on Mondays when no service was performed by him, and in addition payment of the difference between penalty time and one-half and pro rata rates for eight (8) hours' service performed by him on Saturdays, clearly constitutes a double penalty, which is also something the Board has repeatedly recognized and held **that it will not assess.** Witness, for instance, the following quoted excerpt from Third Division Award No. 5638, in that connection:

"THIRD. The claim is for time and one-half for the Saturday and Sunday rest days worked; and for pro rata rate for the Wednesday and Thursdays held out of service. This amounts to a double penalty (Awards 4151, 5548, 5549 and 5423). The claim should be sustained for the days held out of service at the pro rata rate (Awards 5548 and 5549) until the matter complained of is corrected."

See also Third Division Awards 2346, 2695, 2859, 2884, 3444 and others.

In conclusion, the Carrier respectfully reasserts that the instant claim is entirely without support under the governing agreement rules and should be either denied in its entirety or dismissed for the reasons previously set forth herein.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not Reproduced.)

OPINION OF BOARD: In May of 1949, Carrier installed a hump yard retarder system in its Argentine Yard, and established a maintenance force of one leading signal maintainer, three signal maintainers and one relief signal maintainer. On September 1, 1949, when the 40 hour week took effect, an additional relief signal maintainer was added to the force. This force continued without change until June 12, 1951, at which time all positions

except one leading signal maintainer and one signal maintainer were abolished. These two positions were each assigned from 8:00 A. M. to 4:30 P. M.—the lead signal maintainer, Monday through Friday, and the signal maintainer, Tuesday through Saturday. Thus, the maintenance service at the retarder was reduced from seven days to six days per week and the six day coverage required was achieved by staggering the work week of the leading signal maintainer and the signal maintainer positions.

Claimant contends that Carrier violated the agreement by staggering the work week of employes of different seniority classes; and, in addition, contends that it is a violation in any case to stagger work weeks rather than provide relief positions in situations such as the one before us.

Carrier contends that it has the right to obtain coverage of six day positions by staggering work weeks generally, and further contends that this right extends to staggering the work weeks of signal maintainers and leading signal maintainers, since they perform the same work and hold common seniority in the class of signal maintainer.

We do not intend to discuss here the general question of the right of the Carrier to stagger work weeks of employes of the same craft, class and seniority. This right has been upheld in a long line of decisions on this Division. In the case before us, however, leading signal maintainers and signal maintainers are not only separately classified under Article I of the Agreement, but Article III of the Agreement, dealing with seniority, provides in Section 2 as follows:

> "Employes will have seniority rights in the class in which employed and all lower classes. These classes are as follows:
>
> Class A.—Gang foreman, leading signalman, leading signal maintainer.
>
> Class B.—Signalman, signal maintainer. . . ."

Thus it can be seen that leading signal maintainer and signal maintainer positions are in separate seniority groupings, and that while leading signal maintainers also have seniority rights in the signal maintainer class, signal maintainers have no seniority rights in the class of leading signal maintainer.

Carrier contends that both positions perform the same work at Argentine and that the leading signal maintainer on Monday performs the same duties as the signal maintainer on Saturday and vice versa. Therefore, Carrier argues, this case is the same in all respects as Awards 5556 and 5557 which held that a signal maintainer position and a leading signal maintainer position could be staggered in the same manner as was done in this case without violation of the agreement there involved. Carrier takes this position despite the fact that under that agreement, unlike the one before us, both positions were in the same seniority grouping.

Petitioner contends that the separate seniority status of the two positions under the Agreement before us is an essential difference which makes Awards 5556 and 5557 inapplicable to the present case. Petitioner argues that Award 5333, in which it was held a violation to stagger the positions of signal maintainer and assistant signal maintainer, is more analogous to the instant case and should control it.

Although there is no evidence in the record to controvert Carrier's statement that the work actually performed by the two positions at Argentine is the same, we cannot agree with Carrier's position that this nullifies the effect of the separate seniority provided in the Agreement for the two classes on Carrier's right to stagger their work weeks. Whether the reasons for providing separate seniority for those classes were good ones or not is not a question for our determination. The fact remains that the parties have so arranged things that the signal maintainer has no seniority rights in common with the leading signal maintainer in the latter class.

Recent Award 6946 contains a most exhaustive and definitive statement as to when and under what circumstances the occupant of a position may be used on one of his regularly assigned days to do work on a rest day of a different position, by combining the duties of that position with those of his own. In discussing the precise question of which positions may be thus staggered, the Board stated in that award:

> "It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one . . . Neither could two employes in the same craft holding positions in different seniority districts be staggered under this agreement; **nor may two positions in different classes be staggered where common seniority between the classes does not exist.** But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other." (Emphasis added)

The right of Carrier to stagger work weeks in order to accommodate its operations to the forty-hour week does not allow it to eliminate differences between positions which were thought significant enough by the parties at the time their Agreement was executed to justify placing the positions in different seniority groups. We hold that the staggering of the positions of signal maintainer and leading signal maintainer in this case is a violation of the Agreement since there is not common seniority between the two classes.

The claim is for 8 hours at time and one-half for each day a signal maintainer worked on Saturday, on the theory that Saturday was part of the leading signal maintainer's assignment. There is the further claim on behalf of the signal maintainer of 8 hours at straight time rate for each Monday he did not work, and for the difference between his straight time rate and time and one-half rate for work performed on Saturday. Under the circumstances of this case, we feel that there is no basis for sustaining the claim of the signal maintainer since the performance of signal maintainer work by the leading signal maintainer on Mondays was within the kinds of duties which may be assigned to him under the agreement. As to the leading signal maintainer, we follow those awards which hold that the proper rate for work not performed is the pro-rata rate. Accordingly, we sustain claim (a) but at the pro-rata rate. Claim (b) is denied.

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 Employes involved in this dispute are respectively carrier and employes 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 violated.

AWARD

Claim (a) sustained in accordance with Opinion;

Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.